



# General Terms and Conditions of Sale and Delivery

## § 1 Scope of the Terms

(1) Our deliveries, services and tenders shall occur exclusively on the basis of these business terms. Consequently, they shall likewise apply to all future business relations, even if they are not again expressly agreed. These terms shall be regarded as accepted at the latest upon receipt of the goods or service. Claims to the contrary of the customer referring to its terms of business or purchase are hereby be refuted.

(2) Covenants agreed in individual cases with the vendor (including collateral agreements, supplements and amendments) shall at all events take priority over these business terms. A written agreement or our written confirmation shall be definitive for the content of such arrangements. Legally binding declarations must be provided in writing.

(3) Our terms of sale shall only apply vis-à-vis entrepreneurs in the meaning of § 14 BGB [German Civil Code].

## § 2 Tender and Conclusion of Agreement

(1) Our tenders shall be subject to change and non-binding. An agreement shall only effect upon receipt of our written or faxed order confirmation. An agreement shall likewise come into effect if we make a delivery without separate confirmation.

(2) **Conclusion of an agreement shall occur subject to correct and timely delivery by our subcontractors. This shall only apply in the case that we are not responsible for the non-delivery, especially in the case of conclusion of a congruent hedging transaction with our subcontractor. The customer shall be informed of the non-availability of the performance immediately. The counter performance shall be reimbursed immediately. We shall assign to the customer our rights vis-à-vis a supplier with whom we have concluded a congruent hedging transaction to the extent the customer has incurred a loss as a result of the untimely delivery and shall submit the agreement with our supplier to the customer and provide it with all information required for asserting claims against the supplier.**

(3) Drawings, illustrations, dimensions, weights or other performance data shall only be binding if they are included in the technical product description.

(4) We shall reserve title and copyright to illustrations, drawings, calculations and other documents – including in electronic form. This shall in particular apply to those documents which are designated as confidential. The customer shall require our express written approval before passing them on to third parties.

## § 3 Prices and Terms of Payment

(1) Unless otherwise stated in the order confirmation, our prices shall apply ex works, exclusive of packaging; this shall be charged separately.

(2) We shall reserve the right to change our prices correspondingly if after conclusion of the agreement considerable cost reductions or cost increases occur, which were not influenced by us, especially due to collective wage agreements or changes to material prices. On request, we shall document this to the customer.

(3) Deduction of discounts shall require separate written arrangement.

(4) The statutory regulations regarding the consequences of payment default shall apply if not otherwise agreed.

(5) We shall be entitled notwithstanding any provisions of the customer to the contrary to offset payments initially against its existing debts. We shall inform the customer of the nature of the offset performed. Should costs and interest already have been incurred, we shall be entitled to offset the payment first against the costs, then the interest and finally against the main payment.

(6) The customer shall only be entitled to rights of offsetting and retention if its counterclaims have been established as legally binding, are undisputed and recognized by us. Furthermore, it shall only be entitled to exercising its right of retention if its counterclaim is based on the same contractual relationship.

## § 4 Delivery and Performance Period

(1) Delivery dates or periods shall only be binding if they have been confirmed by us in writing or by fax.

(2) We shall not be responsible for delivery and performance delays even in the case of periods and dates bindingly agreed due to force majeure and events which make the delivery difficult or impossible for us, where there hindrance is not of an entirely temporary nature – these events shall in particular include strike, lockout, public decrees etc., including when they occur in the case of our suppliers or their subcontractors or other third parties commissioned by us to fulfill our contractual obligations. They shall entitle us to postpone the delivery or performance by the duration of the delay plus an appropriate start-up time or if it is expected to be a permanent hindrance to rescind the agreement in full or in part with regard to the still unfulfilled portion.

(3) Should the impediment last for more than three months, the customer shall be entitled after setting an appropriate period of grace to rescind the agreement with regard to the portion that is still unfulfilled. Should the delivery or performance time be extended or we are freed from our obligation, the

customer shall not be able to derive any claims to damages here from. We may only invoke the circumstances mentioned if we notify the customer immediately.

(4) We shall be entitled to partial deliveries and partial performance at all times unless such partial delivery or partial performance is unreasonable for the customer.

(5) Observance of our delivery and performance obligations shall presume the timely and proper fulfillment of the obligations of the customer.

(6) If the customer falls into arrears of acceptance, we shall be entitled to demand compensation for the loss we incur; upon occurrence of arrears in acceptance the risk of accidental deterioration and accidental loss shall pass to the customer.

## § 5 Transfer of Risk

Risk shall be transferred to the customer as soon as the consignment has been handed over to the person responsible for carriage or has left our warehouse for the shipping. Should shipping be delayed at the request of the customer, the risk shall pass to it with notification of the readiness for shipping.

## § 6 Warranty

(1) In general, only the properties resulting from the technical product description shall be accepted as the qualities of the goods. Public statements, promotion or advertising shall not contain any binding description of the agreed qualities of the goods. Economic viability calculations and the yield forecasts they contain shall only represent calculation examples and are not binding.

(2) Discoloration of modules, which does not impair their functionality, shall not be regarded as a departure from the agreed quality.

(3) Defect claims of the customer are subject to its proper compliance with its inspection and notification of defect obligations in accordance with § 377 HGB [German Commercial Code] and the Warranty of the goods (if any).

(4) In case of toll manufacturing we are obliged to check parts as well as material, which we receive from our client or one of our client's suppliers, only to the extent that our visual inspection for incoming goods in general requires, i.e. exclusion of external and evident defects and damages.

(5) If a defect in the goods exists, we shall be entitled at our discretion to subsequent performance in the form of defect rectification or to delivery of a new defect-free item. In the event of defect rectification, we shall be obliged to bear all expenses required for the purpose of the defect rectification; especially transport, route, work and material costs provided these are not increased as a result of the goods having been taken to another location than the place of performance. Unless otherwise agreed in written by the parties, we shall not assume any other responsibilities.

(6) Should the subsequent specific performance fail, the customer shall be entitled at its discretion to demand rescission or abatement.

(7) The limitation period for defect claims, unless these are based on malice aforethought, intent or gross negligence, shall be 12 months, calculated from the delivery of the item, or if the item is to be used for installation in a building, from transfer of the plot, if the transfer occurs after delivery of the item.

(8) This shall not affect the limitation period in the event of delivery recourse in accordance with §§ 478, 479 BGB: it shall be five years, calculated from delivery of the defective item.

(9) Should the customer receive a defective installation manual, we shall only be obliged to deliver an installation manual free of defects and this only if the defect of the installation manual is not compatible with proper installation.

## § 7 Liability

(1) We shall be liable in accordance with the statutory provisions if the customer asserts claims for damages based on intent or gross negligence, including intent or gross negligence of our representatives or agents. Provided that we are not charged with any intentional contractual infringement, the liability for damages shall be confined to the foreseeable, typically occurring loss specified in written between the parties or under statutory duty.

(2) We shall in addition be liable in accordance with the legal provisions if we culpably infringe an obligation whose observance is of particular importance for achieving the contractual purpose (cardinal obligation). In this respect the concept of cardinal obligation shall be an abstract description of those obligations whose fulfillment is indispensable for the proper implementation of the agreement and on whose observance the contractual partner may normally rely. However, in this case the liability for damages shall be limited to the foreseeable, typically occurring damage specified in written between the parties or under statutory duty.

(3) Liability for culpable injury to life, physical integrity or health shall not be affected; this shall also apply to compulsory liability in accordance with the Product Liability Act.

(4) Provided nothing to the contrary has been agreed above, our liability shall be excluded.



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(5) The above liability exemptions and restrictions shall also apply to extra-contractual claims.

(6) Insofar as our liability for damages is ruled out or restricted, this shall also apply with regard to the personal liability for damages of our salaried employees, workers, staff, representatives and agents. Insofar as our liability for damages is ruled out, this shall also apply with regard to the personal liability for damages of our salaried employees, workers, staff, representatives and agents.

## § 8 Reservation of Title

(1) We shall reserve title to the goods delivered (goods subject to reservation of title) until payment in full of all liabilities arising from the business connection with the customer (including any ancillary claims and any expenses incurred in the interest of the customer). In the case of open accounts (current account relationships) the property subject to reservation of title shall serve as security for our payment balance claim, including when payments are made to specially designated claims. The customer shall acknowledge the balance if it fails to contradict the balance notification within two weeks of receipt.

(2) Finishing and processing of the goods subject to reservation of title shall occur for us as manufacturers in the meaning of § 950 BGB without committing us. Finished and processed goods shall be regarded as goods subject to reservation of title pursuant to Paragraph (1). In the event of finishing and processing, connection and combination of the goods subject to reservation of title by the customer with goods of other origin to a new item or to a combination, we shall be entitled to co-title in proportion of the invoice value of the goods subject to reservation at the time of delivery to the value of the other processed or combined goods. The co-title share shall be regarded as goods subject to reservation of title pursuant to Paragraph (1). The customer shall protect our co-title property free of charge with the care of a prudent merchant.

(3) Should the goods subject to reservation of title be connected to other items and an item belonging to the customer is to be regarded as the main item in the meaning of § 947 BGB, it shall already be agreed that a co-title share shall pass to us in proportion of the invoice value of the goods subject to reservation of title to the value of the main item and the buyer shall preserve the item for us free of charge. The co-title share shall be regarded as goods subject to reservation of title pursuant to Paragraph (1).

(4) The customer may only sell the goods subject to reservation of title in the normal course of business on its normal terms and subject to agreement of a reservation of title to the extent drawn by us if it has been ensured that its claims from the resale shall pass to us pursuant to the following Paragraphs (6) to (8).

(5) The customer hereby already assigns to us the claims from the resale of the goods subject to reservation of title, including in the context of agreements for work and services or for work and materials, with all ancillary rights. They shall to the same extent serve our security for the goods subject to reservation of title. The buyer shall only be entitled to assignment of the claims to third parties with our prior written approval. Without additional special declarations being required, the customer shall hereby transfer at the same time in proportion to the value of the claims and rights assigned to us as part of the extended reservation of title all of liens to which it is entitled against its customers. If this is not possible, the customer shall transfer the claims collected and the proceeds achieved from redemption of the liens proportionally to us. The customer shall assign to us its right vis-à-vis its customer to grant of a construction lien and to provision of security in accordance with § 648 a BGB. We shall accept the above assignments.

(6) Should the customer sell the goods subject to reservation of title together with other goods not supplied by us, the assignment of the claim from the resale shall only apply to the amount of the invoice value of our goods subject to the reservation of title at the time of delivery. In the case of the sale of goods to which we have co-title pursuant to Paragraph (2) or Paragraph (3), the assignment of claims shall apply to the amount of the co-title share.

**(7) Should the assigned claim be included in an open account, the customer shall already assign a portion of the balance corresponding in amount to this claim, including the closing balance from the current account.**

**(8) The customer shall be entitled until revocation to collect claims from resales.**

(9) The customer shall be obliged to handle the goods with care, especially to insure them at replacement value adequately at its own expense against fire, water, theft and vandalism.

(10) The goods delivered may neither be pledged nor assigned by way of security without Approval of us. In the event of attachments or other encroachments of third parties on the goods subject to reservation of title, the customer must notify us immediately in writing so that we can bring an action pursuant to § 771 ZPO [Code of Civil Procedure]. If the third party is not in a position to reimburse us for the costs in and out of court of an action pursuant to § 771 ZPO, the customer shall be liable for the loss we incur.

(11) Should the customer fail to meet its obligations pursuant to this agreement or other agreements with us, or should we learn of circumstances that diminish its creditworthiness, we may forbid the resale, finishing and pro-

cessing of the goods subject to reservation of title and their mixture or connection with other goods;

| should the right of the customer to possess the goods subject to reservation of title lapse, we shall be entitled to enter the business premises of the customer and take possession of the goods subject to reservation of title at the expense of the customer and to redeem them as well as possible through sale by private contract or by way of auction irrespective of the payment and other obligations of the customer; we shall offset the redemption proceeds after the deduction of costs incurred to the customer against its liabilities; we shall refund any balance thereof;

| on request the customer must communicate to us the names of the debtors of the claims assigned to us, so that we may disclose the assignment and collect the claims; all proceeds arising from assignments must be passed on to us in each case immediately after receipt, if and as soon as claims of ours against the customer fall due;

| we shall be entitled to revoke the direct debit authorization issued.

(12) Should the value of the securities to which we are entitled exceed the claims by more than 20 %, we shall be obliged in this respect on request of the customer to release of securities at our discretion.

## § 9 Design Changes

We shall reserve the right to carry out design changes at any time; however, we shall not be obliged to carry out such changes to products that have already been delivered.

## § 10 Software Use

If software is included in the scope of delivery, the customer shall be granted a non-exclusive and non-transferable right to use the software delivered including its documentation; it shall be transferred exclusively for use on the delivery item intended for this purpose. Use, duplication, revision, translation of the software and transformation from the object code into source code for other purposes shall be forbidden.

## § 11 Right of Rescission-/Termination

(1) We shall be entitled to rescind the agreement in whole or part if

| the customer applies for the opening of insolvency proceedings against its assets or if insolvency proceedings are opened against the assets of the customer,

| we become aware that upon conclusion of the agreement the customer was classed as unworthy of credit or

| the customer discontinues its business operations.

(2) In the event of permanent delivery relationships the right to extraordinary termination without a period of notice shall take the place of the right of rescission.

## § 12 Applicable Law, Place of Jurisdiction, Partial Invalidity

(1) The law of the Federal Republic of Germany shall apply to these business terms and all of the legal relations between the customer and us. The provisions of the UN Sales Convention find no application.

(2) If the customer is a merchant, a legal entity under public law or public special fund entity, the place of jurisdiction for all disputes arising directly or indirectly from this contractual relationship shall at our discretion be Berlin or the registered office of the customer, for actions of the customer the place of jurisdiction shall be Berlin.

(3) Should a provision of these business terms or a provision in the context of other arrangements be or become invalid, this shall not affect the validity of all other provisions or other arrangements.

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