

General Terms of Sale

Section 1 - General

1.1 All deliveries and services shall be subject to these General Terms of Sale and to any separate contractual agreements. Any differing terms and conditions of purchase of the customer shall not become part of the contract, even when an order is accepted or if they are not objected to.

1.2 Offers of the contractor are without engagement and not binding. If there is no separate agreement, a contract shall only be concluded when the contractor issues his written confirmation of the order. Contracts transmitted by fax or by electronic copy via email are deemed to be in written form.

1.3 If clauses customary in the trade are agreed, the rules on interpretation of them as defined in the latest version of Incoterms shall apply, unless otherwise specified in the following.

1.4 Documents, such as illustrations, drawings and information on dimensions and performance shall only be approximately authoritative, unless they are expressly designated by the contractor as binding.

1.5 The contractor reserves ownership of and copy-rights to any and all samples, cost estimates, drawings and the like, and to information embodied in a tangible or intangible manner, including in electronic form. This information shall not be reproduced or made available to a third party without the written consent of the contractor. The contractor shall make documents designated as confidential by the customer available to a third party only with the written consent of the customer. Affiliated companies of the contractor as defined below and advisers (attorneys, auditors, tax consultants) of the contractor are not third parties in the sense of this agreement. For the purposes of these General Terms of Sale, an "Affiliated company" is (i) any company, organization or person that directly or indirectly owns the customer or the contractor or controls the customer or the contractor, (ii) any company, organization or person which has the same direct or indirect ownership or is under the same control as the customer or the contractor, (iii) any company, organization or person which is directly or indirectly owned by the customer or the contractor or is controlled by it. Ownership or control consists of direct or indirect ownership of more than 50% of the nominal value of the issued share capital or more than 50% of shares entitling the respective holder to voting rights in the election of executive bodies or persons with similar responsibilities. Ownership or control also consists of the direct or indirect right to elect or appoint executive bodies or persons with similar responsibilities in majority voting.

Section 2 - Prices and payment

2.1 Statutory tax related to sales at the relevant level or the tax similar to tax related to sale (abroad) must be added to the contractor's prices. This also applies to lump sums.

2.2 Unless otherwise specified in the acknowledgement of order, payments shall be due net (without deduction) within 30 days of the invoice date. If the customer fails to make payment when due, the contractor shall be entitled, without prejudice to other rights that the contractor has under these General Terms of Sale or the applicable law for breach of contract, (i) to suspend or cancel the said delivery and any or all further deliveries of the products or services until and unless such payment has been made; and (ii) to charge the customer interests for any outstanding amount of the payment at the rate of 0.05% of the outstanding amount per day.

2.3 The customer shall be entitled to offset his counterclaims only if they have been ruled on finally and conclusively, are not disputed or have been expressly acknowledged by the contractor in writing. In addition, the customer shall be authorised to exercise a right of retention only insofar as his counterclaim is founded on the same contractual relationship. If deliveries and services are not to be provided or delivered within 4 (four) months after conclusion of the contract, the contractor reserves the right to adjust the prices to the labor and material costs effective at the time of service provision or delivery unless a fixed price has expressly been agreed for the duration of the contract. Cheques and bills of exchange shall only be accepted on account of performance. If major elements of the calculation basis, especially existing collective labour agreements, cost of materials etc. change, then the contractor shall be allowed to adjust the price of future deliveries and services accordingly. However, this right may be executed for the first time 1 (one) year after conclusion of the contract.

Section 3 - Delivery period/time of performance, delay in delivery

3.1 The delivery period/time of performance shall be as agreed by the parties. The agreed period/time shall become significant in terms of the contract if the parties have expressly agreed to this. To allow it to commence and to be observed by the contractor, all commercial and technical questions must first be clarified, and the customer must have fulfilled all his obligations, such as furnishing of the necessary official certificates or approvals or making of a down-payment. If this is not the case, the delivery period/time of performance shall be extended commensurately. This shall not apply if the contractor is solely responsible for the delay.

3.2 If acceptance is contractually required, the contractually specified acceptance deadline, or alternatively the notice of completion shall be authoritative for meeting the delivery period/time of performance, except in the case where the customer justifiably refuses acceptance.

3.3 If shipment or acceptance of the article to be supplied is delayed for reasons for which the customer is responsible or if the customer violates other duties of co-operation on his part, the contractor shall be authorised to demand compensation for the direct, indirect and consequential damage he has incurred in this regard, including any additional expenses. Without prejudice to further claims, the contractor can otherwise dispose of the article to be supplied after he has set a reasonable period of grace and this has expired without remedy without this constituting a breach of contract of the contractor and without any liability whatsoever of the contractor towards the customer due to this, in particular store the article to be supplied at the risk and expense of the customer and/or supply the customer within a reasonably extended period of time.

3.4 If a failure to observe the delivery period/time of performance is due to force majeure, such as natural disasters, epidemics, war, armed conflicts, civil war, revolution, terrorism, sabotage, nuclear/reactor accidents, labour disputes or other events that are outside the contractor's control, the contractor shall be discharged from his performance obligations for the duration of the event and the delivery period shall be extended appropriately. The contractor shall inform the customer of when such circumstances start and end as soon as possible. If the event lasts for more than 6 months, the contractor shall also be authorised to terminate the contract.

3.5 If the contractor is in delay and the customer incurs damage as a result, the latter shall be authorised to demand lump-sum compensation for the damage due to such delay. This shall be 0.5% of the value of that part of the overall delivery that cannot be used on time or in accordance with the contract as a result of the delay, for each full week of the delay but a maximum total amount of 5% of said value. If the contractor is in delay and the customer grants him a reasonable period of time to perform his obligation – taking into account the statutory exceptions – and if this period of time is not observed for reasons for which the contractor is responsible, the customer shall be authorised to terminate the contract within the framework of the statutory provisions. Further claims from delay in delivery shall be defined solely by Section 7 of these terms and conditions.

Section 4 - Transfer of risk, acceptance, packaging

4.1 Delivery or services shall be at the customer's risk from the moment the service provision/delivery is completed. Regarding the delivery of goods, the delivery items shall be at the customer's risk from the moment the respective loading has started at the contractor's factory, even in case of partial deliveries.

4.2 If acceptance has been agreed, this must be conducted immediately at the agreed time, alternatively immediately after the contractor has given notification of completion. The customer cannot refuse acceptance due

to an insignificant defect, provided the contractor acknowledges his obligation to remedy the defect.

4.3 If shipment or acceptance is delayed or not performed due to circumstances not attributable to the contractor, the risk of accidental loss or accidental destruction of the article to be supplied shall pass to the customer from the day on which notice is given of its readiness for shipment resp. the notice of completion. The contractor undertakes to take out insurance requested by the customer in writing, such as transport insurance, at the expense of the customer.

4.4 Partial deliveries shall be permitted as long as is reasonable for the customer.

4.5 Transport and other packaging in accordance with the applicable laws and regulations shall not be taken back, except for wooden pallets. The customer shall dispose of the packaging at his own expense.

Section 5 - Retention of title

5.1 The contractor shall retain his title to the delivery or services until the price for the delivery or services has been settled in full.

5.2 The customer shall be obliged to store the delivery free of charge and to treat the delivery or services subject to retention of title (retained goods) with care; in particular, he shall be obliged at his own expense to insure it adequately against theft, breakage, fire, water and other damage at the reinstatement value. The contractor shall be authorised to take out this insurance at the expense of the customer if the customer has demonstrably not taken it out.

5.3 If during processing of the retained goods by the customer, the retained goods become an integral part of another object by combination or mixing or if a new object is produced by processing or remodeling, the customer hereby transfers its ownership or co-ownership of such object to the contractor and undertakes to hold the object in custody on the contractor's behalf free of charge with the diligence of a prudent businessman. If co-ownership arises, the contractor's share shall correspond to the portion resulting from the ratio of the value of the combined, mixed, processed or remodeled retained goods to the value of the new object.

5.4 The customer shall not sell, dispose of, pledge or otherwise transfer title to the retained goods as security to any third party. In the event of attachments and seizures or other third-party dispositions, the customer shall inform the contractor of this without delay and point out the contractor's ownership to the third party.

The customer is entitled to process or sell the retained goods in the ordinary course of business. This entitlement ends if the customer is in default with the fulfilment of his payment obligations or if the customer (i) ceases or an-

nounces its intention to cease to carry on its business; or (ii) enters into liquidation or is declared insolvent or bankrupt or is deemed to be insolvent or unable to pay its debts.

5.5 If the customer acts in breach of contract, in particular if he is in arrears with payment, the contractor shall be authorised to take back the deliveries or services after issuing a warning. This, like any levy of execution on the deliveries or services by the contractor, shall not constitute a rescission of the contract by the contractor.

Section 6 - Liability for defects

The contractor shall be liable for defects in quality and defects of title to the exclusion of further claims – subject to Section 7 – as follows:

6.1 Defects in quality (Sachmängel)

6.1.1 Details given by the contractor about the properties of the deliveries or services to be supplied are the result of his measurements and calculations and shall be the article's agreed nature, but not its warranted qualities or guarantees.

Deviations customary in trade or commerce and deviations due to legal provisions or deviations representing technical improvements as well as replacing parts with equivalent parts are permitted as long as they do not prejudice the use of the deliveries and services as stipulated in the contract.

6.1.2 The customer can assert claims due to a defect in quality of the deliveries or services only if he has properly fulfilled his obligations to examine the supplied article and to give notice of defects. The customer shall inspect the quantity, quality and specifications of the deliveries or services and shall notify the contractor in writing of any obvious non-conformity, defects, discrepancies or irregularities which are recognizable within the framework of a proper inspection immediately and at the latest within 5 (five) days from the delivery or provision of the service. If there are hidden defects in the deliveries or services which cannot be discovered upon a reasonable inspection and which become apparent at a later date, the customer shall notify the contractor immediately after discovery, but at the latest within the warranty period according to Section 8 of 12 (twelve) months after delivery or provision of the service. The notification of defects must always be made in writing, enclosing receipts, the packing slip and stating the invoice number, the invoice date and the signature on the packages as well as details on the alleged defect. If the customer fails to conduct such inspection and fails to raise any claims regarding the quantity, quality or specifications of the deliveries or services within the above time limits, the deliveries or services shall be deemed to be in conformity with the contract and the customer shall be deemed to have accepted the deliveries or services, and the contractor shall not be liable for any claims raised thereafter.

6.1.3 Subject to Section 6.1.2 above, all parts that prove to be defective as a result of circumstances before the passage of risk shall, at the discretion of the contractor, be repaired or resupplied free of charge. Dismantled/replaced parts shall become the property of the contractor.

6.1.4 Subject to Section 6.1.2 above, the contractor's liability for defects in essential third-party products shall be limited to assignment of the claims for defects of the contractor against his supplier. If the assigned claims for defects are not settled, the claims of the customer against the contractor due to defects shall be revived.

6.1.5 Subject to Section 6.1.2 above, following agreement with the contractor, the customer shall give the contractor the required time and opportunity to make all the repairs and to supply such replacements as the contractor deems necessary; otherwise, the contractor shall be discharged from liability for the resultant consequences. The customer shall have the right to rectify the defect himself or have it rectified by a third party and demand compensation for his necessary expenses from the contractor only in urgent cases of risk to safety or to avert disproportionately great damage; the contractor shall be informed immediately thereof.

6.1.6 Subject to Section 6.1.2 above, of the direct costs incurred as a result of repair or delivery of a replacement, the contractor shall – provided the complaint proves to be justified – bear the costs of the replacement item, including the cost of shipping it to the place of performance. The contractor shall also bear the reasonable costs of removing the defective part supplied and the costs of installing the replacement item. If it can be reasonably demanded in the individual case, the contractor shall also bear the costs of providing any necessary fitters and assistants, provided these costs are not increased due to the fact that the supplied article has been moved to a place other than the place of performance.

6.1.7 The contractor shall not be liable for defects that are attributable to measures or designs expressly demanded by the customer or that occur in materials or products which have been provided by the customer or whose use the customer has expressly demanded contrary to the contractor's advice.

In particular, no liability shall further be assumed in the following cases:

Unsuitable or improper use or incorrect installation or commissioning by the customer or a third party, failure to use original parts and materials, normal wear and tear, incorrect or negligent handling, improper maintenance, unsuitable operating supplies, faulty construction work, unsuitable subsoil, failure to back up or inadequate backing up of data by the customer; defects in cases of insignificant deviations from the agreed quality, or only minor impairment of usability; any defect which is due to causes arising after the risk has passed to the customer; claims based on particular external influences not foreseeable under the contract, or from non-reproducible software errors; failure to check or inadequate checking of programs

and data for computer viruses (as defined in Section 9.3) by the customer, unusual effects of any kind (e.g. vibrations from other assemblies, ingress of foreign matter), chemical, electrochemical or electrical influences – unless the contractor is to blame for them.

6.1.8 If the customer or a third party carries out repairs improperly, the contractor shall not be liable for the resultant consequences.

The same shall apply to changes to the supplied deliveries or services that have been made without the prior consent of the contractor.

6.1.9 The customer shall be obliged to return the defective part to the contractor at the request of the contractor.

6.1.10 Subject to Section 6.1.2 above and Section 8, the above warranty provisions shall apply accordingly to rectification of defects.

6.2 Defects of title (Rechtsmängel)

6.2.1 If use of the supplied deliveries or services results in the infringement of industry property rights or copyrights in the People's Republic of China ("PRC"), the contractor shall in principle and at his own expense obtain the right for the customer to continue using it or modify the supplied article in a way that the customer can reasonably be expected to accept so that the property right is no longer infringed.

If this is not economically feasible or not possible within a reasonable period of time, the customer shall be authorised to terminate the contract. If said conditions exist, the contractor shall also have the right to terminate the contract.

Moreover, the contractor shall – if he is at fault and liable – indemnify the customer against claims of the owner of the property rights that are undisputed or have been ruled on finally and conclusively.

6.2.2 The contractor does not warrant that the end products manufactured on the supplied deliveries or services, including the manufacturing process used, are free of third-party property rights.

Section 7 - Liability

7.1 If the supplied deliveries or services cannot be used by the customer in accordance with the contract because the contractor is to blame for failure to implement or inadequate implementation of suggestions and advice provided before or after conclusion of the contract or for violation of other additional contractual obligations – in particular the obligation to provide instructions on the use of and maintenance of the supplied deliveries or services – the provisions of Sections 6 and 7.2 shall apply accordingly, to the exclusion of further claims by the customer.

7.2 Any party failing to fulfill any or part of its obligations under these General Terms of Sale and the related

contract shall bear the losses caused by such failure. The defaulting party's liability for damages shall equal the actual loss suffered by the other party resulting from the breach but such liability shall not exceed the losses which were foreseeable by the party in breach at the time of conclusion of the contract. Should such failure be attributable to the fault of both parties, both parties shall be liable according to their respective degree of fault.

7.3 Notwithstanding Section 7.2 above or anything to the contrary herein, the contractor shall, in any event, only be liable for damages and losses arising out of or in connection with these General Terms of Sale and the related contract to the extent as caused by the contractor's intentional or grossly negligent misconduct and to such reasonable foreseeably amount actually incurred and proven by the customer. In no event whatsoever shall the contractor be liable for any consequential and/or indirect loss or damages, including but not limited to loss of profit, downtime costs, loss of revenue, loss of use, loss of production, loss of business opportunity and costs of business interruption. Further, the aggregate liability of the contractor arising out of or in connection with these General Terms of Sale and the related contract shall not exceed the total amount of the price for the deliveries or services actually paid to the contractor by the customer for the contract in relation to which the event giving rise to the liability occurred.

The above limitations shall not apply in case of personal injuries caused by the contractor and in case of property damages which are caused by the contractor's gross negligence or intention.

7.4 Further claims for damages – on whatever legal grounds – shall be excluded to the extent legally possible. If liability for damages on the part of the contractor is excluded or limited, this shall also apply to personal liability for damages on the part of the contractor's employees.

Section 8 - Warranty and Limitation Periods

Unless otherwise agreed in the respective contract, the warranty period regarding the deliveries and services shall be and all claims related to quality defects regarding the deliveries or services must be made within 12 (twelve) months from putting into operation, but not later than 15 (fifteen) months from the date of delivery.

Section 9 - Use of software

9.1 If software is supplied, the customer shall be granted a non-exclusive right to use it and its documentation for the contractually agreed purposes. It shall be provided for use on the intended delivery or service supplied. The software shall not be used on more than one system.

9.2 The customer undertakes not to remove manufacturer's data – in particular copyright notices – or to

change them without the contractor's prior written consent.

All other rights to the software and documentation, including copies thereof, shall remain with the contractor or the software supplier. Sublicensing of it shall not be permitted.

9.3 Before providing the software to the customer, the contractor shall use state-of-the-art, up-to-date protection measures to check it for computer viruses, Trojan horses, virus hoaxes and similar programs, program parts and malicious functions that may result in loss or falsification of data or programs or impairment of systems or parts of them (hereinafter referred to as "computer viruses"). Nevertheless, it is not possible to rule out the risk that the software contains unknown or mutated computer viruses or that such viruses may enter an (operating or control) system of the customer at a later time and possibly change or delete program data of the software or other data or programs or impair systems.

9.4 The customer himself shall take measures to protect against computer viruses and other destructive data. The customer shall be obliged to test whether the supplied software or files are infected with computer viruses before executing the software or opening the files. This shall also apply to software the customer wishes to use as part of his (operating or control) systems, where the functionality of his software may be affected thereby.

9.5 The customer shall be obliged to back up data himself on a regular basis in order to prevent loss of it as a result of computer viruses. If data is lost or manipulated, the contractor shall be liable only for the cost involved in restoring the correct data if the customer has backed it up properly.

Section 10 - Duration of contract

If the deliveries or services are not a one-off delivery/service and if no fixed term has been agreed upon with the customer, the contract duration shall be 1 (one) year. It shall be extended by 1 (one) year each time if neither of the parties to the contract objects to the extension in writing 3 (three) months prior to the expiry of the term.

Section 11 - Insolvency of and similar situations regarding the Customer

If the customer suspends payment or ceases or announces its intention to cease to carry on its business, or enters into liquidation or is declared insolvent or bankrupt or is deemed to be insolvent or unable to pay its debts or the customer or one of its creditors applies for the opening of insolvency proceedings regarding the customer's assets, or the insolvency proceedings against the customer's assets are opened, or the opening of such proceedings is refused for insufficiency of assets, the contractor may, without prejudice to its other legal or contractual rights, terminate the contract without prior notice period.

Section 12 - Duty to cooperate

The customer shall ensure that the contractor's employees have unhindered access to the place of performance during the agreed delivery period/time of performance. If the contractor needs to carry out clearance work prior to delivery or service provision, it will be invoiced separately. At its own expense, the customer shall provide sufficient air, ventilation, electricity, sockets, heating as well as a lockable storage area for work equipment and spare parts at the place of delivery.

Section 13 - Applicable law, place of jurisdiction

13.1 These General Terms of Sale and the related contract shall be subject to the laws of the PRC excluding its conflict of law rules. Application of the U.N. Convention on Contracts for the International Sale of Goods is expressly excluded.

13.2 All disputes arising out of or in connection with these General Terms of Sale and the related contract including any question regarding their existence, validity or termination, shall be settled through friendly consultations between both contract partners. If no agreement can be reached between the contract partners within 30 (thirty) days after the dispute has arisen, the dispute shall be finally submitted to an arbitration tribunal of the China International Economic and Trade Arbitration Commission (hereinafter referred to as "CIETAC"), Shanghai Sub-Commission, for arbitration according to the Rules of Arbitration of the said arbitration commission effective on the date of request for arbitration. The place of arbitration shall be in Shanghai, PRC. The arbitration proceedings shall be conducted in the English language.

The arbitration tribunal shall consist of 3 (three) arbitrators. Each contract partner shall appoint 1 (one) arbitrator. The two first mentioned arbitrators shall select the third arbitrator, who shall neither be of German nor Chinese nationality and act as chairman of the arbitration tribunal. If a contract partner fails to appoint its arbitrator within 1 (one) month after receipt of the notice of arbitration from the arbitration commission or if the two first mentioned arbitrators cannot come to an agreement on the chairman of the arbitration tribunal within 1 (one) month after they have been appointed, the respective arbitrator or the chairman of the arbitration tribunal shall be appointed by the Chairman of the CIETAC, Shanghai Sub-Commission.

The arbitration award shall be final and binding on the contract partners. The arbitration fee and the reasonable expenses of the winning contract partner, including lawyer's fees, shall be borne by the losing contract partner except as otherwise awarded by the arbitration tribunal. During the arbitration proceedings the contract partners shall continue to perform the contract except for the stipulations which are in dispute.

Section 14 - General provisions

14.1 Unless otherwise specified in the acknowledgement of order, the place of performance for the parties' mutual obligations from the contractual relationship shall be the place of the contractor's registered offices. This shall also apply if clauses customary in the trade have been agreed.

14.2 Declarations serving to establish, safeguard or exercise rights shall not be valid unless given in writing.

14.3 The customer shall not assign his contractual rights to a third party without the written consent of the contractor.

14.4 These General Terms of Sale and the related contract shall to the greatest extent possible be interpreted in such a manner as to comply with the applicable laws. However, if any provision thereof is, notwithstanding such interpretation, determined to be or to become invalid or unenforceable, or if there is an omission, the remaining provisions of these General Terms of Sale and the related contract shall remain to be binding upon the contract partners. The contract partners agree to replace any such invalid or unenforceable provision by a valid and enforceable one which comes as close as possible to the original purpose and intention of the invalid or unenforceable provision. In the event of an omission, a provision which corresponds with the purpose and intention of what would have been agreed between the contract partners, if the matter had been considered at the outset, shall be deemed to have been agreed.