

General Terms and Conditions of Sale and Delivery (Domestic/International)

On the basis of the terms and conditions recommended by Verband Deutscher Maschinen- und Anlagenbau e.V. (VDMA) (= German Machine and Plant Engineering Association)

August 2020

1. Contractual Basis

- 1.1. All deliveries are carried out exclusively on the basis of and in accordance with written order confirmation of the Seller. By accepting the order confirmation without objection, or if such is not to be expected under the given circumstances, by accepting the delivery, the Buyer recognizes the Seller's general terms of delivery, specifications, item descriptions etc. as provided to him.
- 1.2. Deviations from the order in the order confirmation become part of the contract unless the Buyer objects within two weeks. If an order is based on additional special agreements, e.g. terms of payment, delivery and liability provisions etc., in the event of contradictions, the specific provisions of these General Terms of Delivery shall apply.
- 1.3. Purchasing terms of the Buyer deviating from those of the Seller, even where reference is made to this fact in the order, are only binding on the Seller with the Seller's express written confirmation. If in exceptional cases, it is agreed that the purchasing terms of the Buyer shall apply, the Seller's conditions shall also apply in as far as they govern articles not regulated in the Buyer's purchasing terms.
- 1.4. Ancillary agreements – including in particular warranty of properties – and changes or amendments to the contract or these General Terms and Conditions of Delivery are only effective with the written confirmation of the Seller.
- 1.5. Unless explicitly stated otherwise, all offers are subject to change without notice.

2. Delivery and Quality

- 2.1. The scope of all deliveries is defined by the Seller's written order confirmation, in exceptional cases by the offer, in as far as the Seller has expressly declared that the offer has binding effect and acceptance is granted within the prescribed period.
- 2.2. Unless expressly stated otherwise, all delivery specifications forming part of a Seller's offer or order confirmation – descriptions of features and quality as well as weights and dimensions – are approximate and subject to the customary tolerances. The Seller is also entitled to make design changes or replace contracted goods from specific sources with other goods.
- 2.3. Delivery provisos of the Seller's suppliers, irrespective of their nature, also apply to the Buyer, unless delivery from stock was expressly specified in the offer or order confirmation; the Seller will notify the Buyer immediately of any such delivery provisos.
- 2.4. The Seller retains the right of title and reserves all copyrights related to cost estimates, drawings, specifications and other documents; such documents must not be made accessible to third parties, used in the course of contract negotiations with third parties or for follow-up projects.

3. Prices and Terms of Payment

- 3.1. Prices are quoted – in each case excluding sales tax at the valid rate – ex Seller's warehouse, excluding packaging, freight charges and storage costs, transport insurance and other dispatch costs.
- 3.2. The Seller's invoices must be paid 30 days after date of invoice, in cash and without deductions.
- 3.3. The Seller reserves the right to increase prices correspondingly after expiration of 4 months since conclusion of the contract if costs increase, especially due to the conclusion of collective bargaining agreements or to increases in material prices. Seller will provide evidence to the Buyer on request.
- 3.4. If payment is not effected by the due date, the Seller is entitled to charge interest to the amount of 8 percentage points above the applicable base rate, without prejudice to the right to claim further damages.
- 3.5. The Buyer shall not be entitled to offset any claims for payment against Seller's claims unless such claims are either acknowledged by the Seller or legally established counterclaims.
- 3.6. Any right to withhold payment may only be exercised if it is based on claims of the Buyer arising from the same transaction between the parties, in as far as the claims are related to the delivered object and are either acknowledged by the Seller or legally established.

4. Delivery Times

- 4.1. Agreed delivery times shall commence upon dispatch of the acknowledgment of any respective order, in no case, however, prior to the submission of all official approvals and documents to be produced by the Buyer, nor prior to receipt of any stipulated down payment. Delivery times shall be deemed to have been complied with if, upon expiration of the delivery period, the respective ordered item has either left the Seller's works or if notice of readiness for its shipment has been given, and, in case the Seller is obligated under any respective agreement to ship out any respective ordered item, provided that such shipment is effected without culpable delay. Partial deliveries are permissible.
- 4.2. Delays in delivery due to circumstances beyond the Seller's control – including, for example, the timely provision of samples (e.g. packaging and filling materials) – will result in an appropriate extension of the delivery time; this also applies in the case of an already existing delay on the part of the Seller. The Seller will notify the Buyer immediately of any such circumstances.
- 4.3. If dispatch is delayed at the Buyer's request, commencing one month after notice of readiness for dispatch has been given, any accruing storage costs, amounting to no less than 0.5 % of the amount of the pertinent invoice, will be invoiced to the Buyer if such storage is performed at the Seller's works, unless the Buyer proves that no such costs were incurred or that any such costs were substantially lower.
- 4.4. Following the fixing of and fruitless expiration of a reasonable period of time, the Seller may, however, dispose of any respective ordered item otherwise and supply the Buyer within a reasonably extended time limit.
- 4.5. Delivery delays within the Buyer's scope of responsibility do not affect agreed payment obligations and delivery times.

5. Passing of Risk

- 5.1. The risk passes to the Buyer with handover of the consignment to the freight carrier; this also applies in exceptional cases where delivery carriage paid was agreed upon.
- 5.2. The freight carrier, means of transportation and the transport route will be selected with due diligence by the Seller, unless otherwise stipulated by the Buyer in good time before expiration of the delivery period.
- 5.3. The passing of risk with handover of the consignment to the freight carrier shall also be deemed to be agreed upon between the parties when partial deliveries are made or when the Seller has agreed to perform additional services, such as installation and commissioning.
- 5.4. In any case of delay of a shipment due to circumstances for which the Buyer is responsible, the risk shall pass to the Buyer on the day on which the Seller is ready to dispatch the goods; however, the Seller will, at the Buyer's request and cost, obtain the insurance coverage the Buyer demands.
- 5.5. Delivered items with only non-substantial defects will be accepted by the Buyer, without prejudice to any of the Buyer's rights under section 7 of this document or under law.
- 5.6. Partial deliveries shall be permitted.

6. Retention of Title

- 6.1. The Seller retains the right of title to the respective goods until all payments arising from the business transaction with the Buyer have been received. The Seller shall be entitled to take back the delivered item if the Buyer is in breach of contract, particularly in the case of default of payment. The redemption resp. assertion of retained property rights does not require rescission by the Seller. These actions or the seizure of the delivery item do not constitute rescission of contract unless this is expressly declared in writing by the Seller. The Seller shall be entitled to realize the delivery item after its redemption. Realization proceeds shall be credited against the Buyer's liabilities – less reasonable realization charges.
- 6.2. If property rights cannot be validly retained in a foreign country or state, provided that the laws of such country or state are applicable, the Buyer is under obligation to cooperate in taking all measures, including without limitation to give any declaration required on his part, in order to provide the Seller with securities equivalent to a retention of property rights.
- 6.3. The Buyer is under obligation to handle the delivery item with care and, at the Seller's request and while retention of property rights lasts, to insure it adequately against damage. The Buyer herewith assigns claims against insurance to the Seller.
- 6.4. The Buyer shall give the Seller immediate written notice of any attachment or other intervention by any third party to allow the Seller to take legal action according to section 771 of the Code of Civil Procedure (ZPO). In as far as the third party is unable to reimburse the Seller for legal and extrajudicial costs of an action according to section 771 ZPO, the Buyer shall be liable for the loss incurred by the Seller.
- 6.5. The Buyer shall be entitled to resell the delivery item in the ordinary course of business; however, he herewith assigns all claims arising from resale to the purchasers or third parties to the final invoice amount (including sales tax), regardless of whether the delivery item was resold before or after processing. The Buyer shall be entitled to collect these claims even after assignment; the power of the Seller to collect such claims himself remains unaffected. However, the Seller undertakes not to collect claims as long as the Buyer meets his financial obligations from proceeds received, is not in arrears with payments and in particular did not file for insolvency or stop payments. If this obligation does not apply, the Buyer shall, at the Seller's demand, announce assigned claims and debtors thereof, provide all information required for collection, hand over all appendant documents and inform debtors of the assignment.
- 6.6. Processing or transformation of the delivery item by the Buyer will be effected for the Seller only. Where the delivery item is processed with other objects not owned by the Seller, the Seller acquires joint title to the new object in the ratio of the value of the delivery item to other processed objects at the time of processing. The same applies to the item delivered with reservation as to the object emerging from processing.
- 6.7. If the delivery item is inseparably mixed or connected with other objects not owned by the Seller, the Seller acquires joint title to the new object in the ratio of the value of the delivery item to other mixed or connected objects at the time of mixing or connection. If the Buyer's object is to be regarded as the main object following mixture or connection, it shall be deemed to be agreed upon that the Buyer transfers joint title to the main object on a pro rata basis. In doing so, the Buyer preserves the arising sole or joint ownership for the Seller.
- 6.8. The Seller is under obligation to release at the Buyer's request securities due to him, in so far as the realizable value of his securities exceeds the claims to be secured by more than 10 %; the Seller shall select the securities to be released.
- 6.9. Where the law applicable in the area in which the delivery item is located does not permit retention of title, the Seller shall be entitled to exercise all rights he is able to reserve to the delivery item. The Buyer is under obligation to participate in actions in respect of protection of the Seller's right of ownership or, in its place, another security interest in the delivery item.

7. Liability for Defects

- 7.1. The Buyer is under obligation to carefully examine the ordered item immediately after receipt to ensure that it is complete and in proper condition. The period allowed for notification of defects according to section 377 subsections 1 and 2 of the HGB (German Commercial Code) is 8 days; the date of receipt of written notification of defect by the Seller is decisive.
- 7.2. If the Buyer intends to assert claims arising from defects of the ordered item, he is under obligation to hand over the ordered item or parts thereof to the Seller for inspection, unless this is technically not possible or unreasonable (e.g. fixed large systems). Provided that notice of defect is justified and submitted in due time, the Seller will, at his discretion, either remedy the defect or supply a faultless item. Costs for the removal of defects, including costs for transport, tolls, labor and material, will be borne by the Seller. This shall also apply for delivery and shipment costs according to sentence 1 to the customary extent. Where the costs for the removal of defects increase because the Buyer brought the ordered item to a place other than the place of delivery, the Buyer will bear the additional costs.
- 7.3. The Seller is entitled to refuse subsequent performance in accordance with the provisions of the law. In the case of refusal of subsequent performance, its failure or impossibility for the Buyer, the Buyer is entitled to withdraw from the contract or to reduce the purchase price in accordance with section 7.4 below.
- 7.4. The Buyer shall only be entitled to withdraw from the contract – provided that such rescission is not excluded by law – or to reduce the purchase price after unsuccessful expiration of a reasonable period of grace specified by the Buyer for the remedying of defects, unless under the provisions of the law, such a period of grace need not be set. In the case of withdrawal from the contract, the Buyer shall be liable not only for deterioration, loss and non-derived profit that may result under normal care, but also for any negligent or willful damage.
- 7.5. The provisions in section 8 shall apply for any possible claims by the Buyer for damages and reimbursement of expenses.
- 7.6. The Seller's liability for defects does not apply if the Buyer does not follow operating and maintenance instructions, carries out modifications to the delivered item, changes parts or uses consumables that do not comply with the original specifications, unless the Buyer provides evidence that the defect is not the result of such actions.
- 7.7. Liability for defects of the ordered item or parts thereof originating from the ordinary wear is basically excluded.
- 7.8. The period of limitation for all defects related claims shall be one year as of the date on which the limitation period commences to run under law. In any case of intentional misconduct or intentional misrepresentation, and in any case provided for under BGB §§ 478, 479, the statutory periods shall apply as well.

8. Seller's Liability, Exclusion of Claims for Damages

- 8.1. Unless otherwise specified under these Terms and Conditions, the Seller shall be liable only and exclusively to the extent set out hereinafter: According to the legal provisions, the Seller is liable if the Buyer asserts claims for damages or expenses (hereafter referred to as: claims for damages) based on willful intent or gross negligence – including intent or gross negligence caused by his vicarious agents or representatives, if the Seller culpably violated a material contractual duty as well as in cases of injury to life, body or health.
- 8.2. Damages for breach of a material contractual duty shall be limited to the foreseeable, typically occurring damage.
- 8.3. Any further claim for damages – regardless of the legal nature of the asserted claim – shall be excluded. Therefore, the Seller is, in particular, not be liable for damage not having occurred to the delivery item itself.
- 8.4. The mandatory provisions of the Product Liability Act (Produkthaftungsgesetz) remain unaffected hereby.
- 8.5. The Buyer's claims for reimbursement of expenses shall be limited to the value of the interest the Buyer has in performance of the contract.
- 8.6. In as far as the Seller's liability is excluded or limited, the same applies to the personal liability of his employees, staff, representatives and agents.
- 8.7. The Buyer has been informed and hereby acknowledges that under German law, any and all of the Buyer's claims under warranty and/ or contractually accorded guarantee claims will expire if the Buyer modifies any part(s) of the items delivered under this sales contract. This expiration applies specifically but not exclusively to the (operating) software of the delivered items. Moreover, the Seller hereby informs the Buyer that any and all of the aforementioned modifications to the delivered items may constitute an infringement of the Seller's intellectual property rights; the Buyer hereby confirms that he is aware of this.

9. Buyer's Right of Rescission

- 9.1. The Buyer has the right to withdraw from the contract if full performance by the Seller becomes definitely impossible before the passing of risk. The same shall apply if the Seller is unable to meet his contractual obligations. Section 8 shall apply if such impossibility / incapacity affects essential contractual duties. The Buyer is also entitled to withdraw from the contract if performance of a delivery in fulfillment of an order for items of the same kind becomes impossible as to a part of its quantity and the Buyer has a legitimate interest in rejecting a partial delivery; if this is not the case, the Buyer is entitled to reduce payment correspondingly.
- 9.2. The Buyer shall have right of rescission in any case of default of performance pursuant to section V hereof, provided that the Buyer grants the defaulting Seller a period of grace in which to fulfill his obligations, in combination with an explicit declaration on the Buyer's part that acceptance of the Seller's performance will be refused after expiration of this period of grace, and further provided that the Seller fails to fulfill his obligations within that period of grace.
- 9.3. If performance becomes impossible during default of acceptance of or by fault of the Buyer, the Buyer remains under obligation to pay consideration.
- 9.4. Moreover, the Buyer is entitled to withdraw from the contract if, due to the Seller's fault, the repair or replacement of any defect as defined by these Terms and Conditions of Sale and Delivery for which the Seller is responsible is not fails to be completed within a reasonable period of grace. The Buyer shall also have right of rescission if such repair or replacement by the Seller has become impossible or if the Seller has become permanently incapable of providing such repair or replacement.

10. Seller's Right of Rescission

- 10.1. In the case of unforeseen circumstances as defined by Section 4 hereof, insofar as they materially change the economic importance or the subject matter of the performance due or significantly affect the Seller's business operations and in the event of it subsequently transpiring that performance is impossible, the contract will be amended accordingly.
- 10.2. The Seller shall have the right to withdraw from the contract, in whole or in part, if amendment of the contract is not economically reasonable. The Buyer is not entitled to claim for damages caused by such a rescission.
- 10.3. The Seller shall give the Buyer notice of his intent to withdraw from the contract immediately after having become aware of the consequences of any such event, and this also applies if an extension of the delivery period was initially agreed upon between Seller and Buyer.

11. Suspension and Amendment of Contractual Obligations

- 11.1. Events or circumstances the occurrence or prevention of which are beyond the control of the contracting parties (in addition to natural occurrences, rulings of higher authorities, strikes and lock-outs, this shall also include cases of blameless impossibility to which § 279 BGB does not apply, in particular any disruption of transportation or operations affecting suppliers or sub-contractors as well as supply bottlenecks or delays in the supply of any raw materials which may be needed for performance of the contract, will release the contracting parties from their contractual obligations in as far and for as long as performance is affected thereby. The contracting parties will notify each other immediately of such events and circumstances; moreover, in the event of the postponement of deadlines, the Seller will inform the Buyer immediately of the elimination of obstacles and notify him of the new deadlines.
- 11.2. Where events or circumstances as described under section 11.1 lead to a significant increase in the Seller's purchase or procurement costs, the Seller is entitled to invoice a reasonable price increase to the Buyer, even if a fixed price has been agreed upon. If the Buyer does not agree to the price increase within a reasonable period to be specified by the Seller, the Seller has the right of rescission as regards the part of the contract that has not yet been fulfilled.
- 11.3. If, as the result of events or circumstances as described in section 11.1, the Seller is finally not able to meet his obligation to deliver within a reasonable period to be specified by the Seller, the Buyer has the right of rescission as regards the part of the contract that has not yet been fulfilled, with the exclusion of any further claims. In otherwise similar circumstances, the Seller shall have such right of rescission if his attempts to meet his continuing obligation to effect delivery have remained unsuccessful 6 months from the start of the impediment to delivery.

12. Place of Performance, Place of Jurisdiction, Applicable Law, Other Terms and Conditions, Acceptance, Final Provisions

- 12.1. The place of performance for delivery is the respective place of dispatch, the place of performance for payment Kirchlinteln.
- 12.2. The exclusive place of jurisdiction, also for summary draft enforcement proceedings, summary check enforcement proceedings and summary proceedings restricted to documentary evidence, shall be the respective court of general jurisdiction over the Seller's place of business, without prejudice, however, to the Seller's right to resort to the court of general jurisdiction over the Buyer's place of business.
- 12.3. The contractual relationship between Seller and Buyer shall be governed exclusively by German substantive law, under exclusion of the United Nations Convention on the International Sale of Goods (CISG) and the provisions of private international law.

- 12.4. The ordered items are designed, manufactured and installed in accordance with the legal provisions applicable in the Federal Republic of Germany. If the Buyer desires the ordered items to be installed in accordance with provisions differing from the German regulations, he will notify the Seller of this upon placing the order or immediately thereafter. At the same time, the Buyer will forward to the Seller a copy of such legal provisions differing from the German regulations in German or English. The Seller reserves the right to reasonably adjust any respective price and delivery time to the extent required following such a request from the Buyer.
- 12.5. It is the duty of any foreign Buyer to take any measures beyond the legal provisions in effect in the Federal Republic of Germany for the purpose of protecting operating personnel and other persons against any chemical, biochemical, electrical, electro-mechanical, electroacoustic and similar effects caused by the machine, by packaging materials, packaging means and filling materials.
- 12.6. If any particular provision of these Terms and Conditions is or becomes invalid, such invalidity shall not affect the validity of the other provisions hereof. The parties to any respective agreement shall agree upon a new provision serving the purpose pursued by the provision having become invalid at best.
- 12.7. These Terms and Conditions shall only apply to supplies and deliveries. Our "Terms and Conditions of Repair and Installation Services (Domestic/International)" shall apply to all repair and installation services.
- 12.8. The above terms and conditions are the General Terms and Conditions of Sale and Delivery (Domestic/International) of:

• EMKON automation GmbH, Bahnhofstraße 8a, 27308 Kirchlinteln

- hereabove referred to as Supplier -