

General Sales and Delivery Terms

1. Scope of the General Sales and Delivery Terms

- 1.1. Our deliveries and performances are subject to these General Terms and Conditions. They thus also apply to all future business relations without the necessity of supplementary agreements. These Terms and Conditions are considered accepted as soon as the products or performances have been delivered. Counter statements made by the orderer with reference to his own General Terms and Conditions are herewith expressly objected.
- 1.2. All agreements between us and the orderer, which are made pro execution of this contract, need to be formulated in writing in the order acknowledgement.

2. Offer; Conclusion of Contract

- 2.1. Our offers are non-binding and subject to confirmation. Legal effectiveness of declarations of acceptance and orders are subject to our written order acknowledgement.
- 2.2. Prices may change if a period of at least six weeks passes between the conclusion of the contract and the agreed upon date of delivery. In case wages, material costs or current market cost price rise after such time period and before completion of the delivery, we shall be entitled to increase the price in accordance with the growth in costs. The orderer may withdraw from the contract only if the increase in price considerably exceeds that of the general cost of living between the times of order and delivery.
- 2.3. Drawings, illustrations, measures, weights and other performance data are binding only if agreed upon in writing.
- 2.4. At any time, we reserve the right to carry out design changes and modifications.
- 2.5. Our employees are not entitled to enter into supplementary agreement or grant oral guarantees on the quality and condition of the subject matter that add to and go beyond the contents of the respective order acknowledgement.

3. Prices; Terms of Payment; Delay in Payment; Annulment

- 3.1. Our prices are ex works (EXW, Incoterms revision 2000, no.1) excluding packaging. Respective VAT will be added to all prices.
- 3.2. If not otherwise agreed, all invoices sent by us shall be payable without deductions within 14 days net from the date of invoice.
- 3.3. Notwithstanding any other provisions of the orderer we shall have the right to appropriate payments to his older debts and will inform the orderer on the kind of appropriation carried out. If costs and interest have occurred we shall be entitled to first appropriate the payment to the costs incurred and then to the interest and finally to the major debt.
- 3.4. Payment is considered received no sooner than we can dispose of the amount. In case of cheques, payment is considered received as soon as the cheque has been honoured and the amount credited to us without reservation. The acceptance of bills of exchange is subject of prior written agreement. The usual bank discount charges and collection fees apply to the taking in of bills of exchange and are due cash down immediately.
- 3.5. If payment is delayed we shall have the right to claim an interest rate that lies 9% above the respective basic interest rate as liquidated damage compensation. Such liquidated damages may be lower only in case the orderer prove evidence of a lesser damage; we reserve the right to prove greater damage.
- 3.6. If we are notified of circumstances that give us reason to doubt the creditworthiness of the orderer such as the issuing of bad cheques, enforcement measures due to liabilities of the orderer, cessation of payments or imminent debt overload, we shall be entitled to accelerate the maturity of the entire balance due. We shall furthermore be entitled to ask for advance payments or provision of security.
- 3.7. The orderer shall have the right to set off a claim only if the counterclaims have become indefeasible and thus indisputable.
- 3.8. Notwithstanding the possibility to assert an higher actual damage we shall be entitled to claim 10% of the sales price for such cost incurred by way of the processing of the order and for the loss of profit if the orderer unrightfully withdraws from an already placed order. The orderer is reserved the right to give evidence of a lower damage.

4. Time of Delivery; Impossibility of Performance

- 4.1. All delivery times or deadlines whether binding or non-binding need to be agreed upon in writing.
- 4.2. Unless agreed otherwise, the delivery period commences with the sending of the order acknowledgement.
- 4.3. The adherence to the agreed-upon delivery terms is subject to the in-time receipt of all documents, of all necessary permissions and approvals especially of plans and layouts to be supplied by the orderer as well as to the compliance with the agreed-upon terms of payment and other obligations.
- 4.4. The delivery period is considered adhered to if the delivery items have been supplied by its day of expiry and the orderer has been informed accordingly.
- 4.5. If we delay delivery, the orderer can if there is proof of damage caused by our delay, claim a 0.5% compensation for each completed week of delay but altogether not more than 5% of that part of the delivery which due to our delay could not be brought to its intended use.
- 4.6. If for by us caused reasons we fail to deliver as was agreed upon, the orderer shall have the right to claim damages. The damage claim of the orderer is limited to 10% of the value of that part of the delivery which due to the impossibility could not be brought to its intended use.
- 4.7. Excluded are damage claims that go beyond those under subclauses 4.5 and 4.6 unless liability is imperative for reasons of intent, gross negligence, warranty or assumption of procurement risk. This does not involve any reversal of the burden of proof to the disadvantage of the orderer. The right of the orderer to withdraw from the contract remains untouched.
- 4.8. If after notification of the orderer of the availability of the delivery items the orderer wishes to delay delivery by more than one month, we shall have the right to charge a storage fee of 0.5% of the price of the delivery items but no more than a total of 5%. Our right to prove higher or lower storage charges remains unaffected.
- 4.9. Partial shipments are permissible insofar as they are acceptable to the orderer.
- 4.10. The compliance with a performance deadline depends on the in-time delivery to our hands.
- 4.11. The delivery period shall be extended if action needs to be taken in the framework of industrial disputes and in particular in case of strikes and lockouts and at the occurrence of unforeseen handicaps that are not within our intentions, for example system breakdowns, delayed supply of essential

materials, if such handicaps can be demonstrated to considerably affect the delivery of the delivery items. This also applies if such circumstances occur at the sub-supplier. The delivery period is extended in accordance with the duration of such action and handicap.

- 4.12. Neither shall we be liable for such handicaps if they occur during a present delay. In accordance with their importance we shall inform the orderer of the beginning and end of such handicaps as soon as possible.
- 4.13. If a handicap persists for more than three months, the orderer shall have the right to withdraw from the not yet fulfilled part of the contract after a reasonable period of grace has been granted and passed. The orderer cannot derive any damage claims from the extension of the delivery period or from our release from an obligation. Our invoking of above circumstances shall be possible only if we inform the orderer immediately.

5. Passing of Risk

- 5.1. We deliver ex works (EXW, Incoterms revision 2000, no.1).
- 5.2. On request and at the expense of the orderer we shall insure the shipments against the standard transport risks...
- 5.3. If the orderer declares non-acceptance of the goods, the risk of accidental loss, destruction or deterioration passes to the orderer at the time of their rejection.
- 5.4. The risk shall furthermore pass to the orderer if delivery is delayed for reasons that lie within the responsibility of the orderer or if the orderer fails to take delivery when offered by us.

6. Reservation of Title

- 6.1. The delivery items (goods subject to reservation of title) remain our property until the orderer has fulfilled our rightful claims arisen from the business relation.
- 6.2. During the time of reservation of title the orderer shall have the right to resell to exclusively resellers in the normal course of business and only at the condition that he has not failed to meet his financial obligations towards us and that the reseller receives payment from his customers or retains the property in the goods until the customer has met his financial obligations.
- 6.3. The orderer assigns us all claims on the purchase price agreed between us and the orderer (including value-added tax) which arise from the orderer's resale independently on whether the delivery items are resold without or after processing. The orderer may collect the sum due after its assignment. Our right to recover the debts ourselves shall remain unaffected. We promise to not collect the sum due as long as the orderer duly fulfils its financial obligations and is not arrears with payments. In latter cases he shall on our request inform us on the transferred claims and respective debtors, communicate all details required for collection of the sums due, hand over the corresponding documents and inform the debtors (third parties) about the assignment.
- 6.4. Processing or transformation of the goods by the orderer shall be on our behalf at all times without binding us in any way. If the delivery items are processed with other goods which are not of our property we shall be assigned the co-ownership in the new object in proportion of the value of the delivery items to the other objects processed at the time of processing.
- 6.5. If the delivery items are mixed inseparably with other goods that are not of our property we shall be assigned the co-ownership of the new object in proportion of the value of the delivery items to the other goods of the compound. The orderer shall keep our joint property in safe custody.
- 6.6. The orderer may neither pledge nor assign the delivery items by way of security. The orderer shall inform us immediately about any levy of attachment, seizure of property or any other order by third parties and make all information and documents required for the safeguarding of our rights available to us. Law enforcement officers or other third parties shall be made aware of our property.

- 6.7. On request of the orderer we shall free the securities due to us if their value exceeds the claims to be secured and not yet settled by more than 20%.
- 6.8. The orderer shall inform us immediately of all third party attachments, seizures or other orders or interventions.
- 6.9. If the orderer violates substantive requirements of the contract especially the requirement to settle all payments in due time, we shall have the right to seize the goods after our demand of payment; the orderer is bound to surrender the goods. Our taking back of the goods resp. enforcement of reservation of title or seizing of the goods subject to reservation of title does not imply our withdrawal from the contract unless such withdrawal has been expressly declared by us.

7. Liability for Defects; Duty of Inspection, Notification and Rejection; Supplementary Performance

- 7.1. We shall be liable for the delivery items to correspond to the contract description and to be free of defects which annul or considerable reduce their usability as specified in the contract.
- 7.2. Obvious defects that are clearly visible to the average orderer must be given notice of by registered letter within 10 working days after delivery. Non-obvious defect need to be reprimanded within 10 working days after their identification. The assertion of claims from defects is subject to the adherence to above time periods. The defects and in particular the error messages that have occurred shall be described in as much detail as possible (e.g. by error logs).
- 7.3. We shall have the choice between the free-of-cost rework, new delivery or new performance of inadequate goods or services.
- 7.4. All liability claims from defects are subject to a limitation period of 12 months from delivery with the exception of claims that are subject to the Product Liability Act, other producer liability or if done intentionally or in case of gross negligence, absence of guaranteed properties or violation of essential contractual duties and in particular the endangering of life, body or health.
- 7.5. The orderer shall grant us a sufficient period of time so we can eliminate the defect as well as the occasion and support as can be reasonable expected. If the orderer refuses one or all of the above we shall be freed from any supplementary performance.
- 7.6. If we let the reasonable grace period pass without eliminating the defect, the orderer may request a reduction of price or the withdrawal from the contract as specified by law.
- 7.7. If the orderer requires the reworks to be carried out in a by him specified location, we may meet such requirements; the parts subject to our liability for defects remain free of charge whereas the hours worked and travel expenses shall be billed to him according to our standard rates.
- 7.8. Liability of defects does not include general wear or damage occurring after the passing of risk for reasons of faulty or negligent treatment, excessive stress, inappropriate equipment or for reasons of particular outside influences not provided for in the contract, or non-reproducible software errors. We shall not be held liable for defects that are due to inappropriate

modifications or corrective maintenance jobs carried out by the orderer or any other third party.

- 7.9. Our liability for defects is limited to twelve months for supplementary performance but shall be no less than the original liability period for defects valid for the contract goods. The period extends for those parts that cannot be operated as intended due to the interruption by the duration of the interruption caused by our supplementary performance.
- 7.10. Any further claims for defects brought against us and our auxiliary persons by the orderer shall be excluded whereas clause 8 (Other Liabilities) remains unaffected.

8. Other Liabilities

- 8.1. Damage claims asserted by the orderer for whatever legal ground shall be excluded. This does not apply if liability is imperative for reasons that are subject to the Product Liability Act, other producer liability or if done intentionally or in case of gross negligence, absence of guaranteed properties or violation of essential contractual duties and in particular if life, body or health are endangered.
- 8.2. Compensation for a fundamental breach of contract shall be limited for both the damage that can be predicted from the type of contract unless caused intentionally or by gross negligence as well as for each individual case of damage to 100,000 euros for financial loss and to 500,000 euros for personal injury and damage to property. We cannot be held liable for any financial loss from services not rendered by the application of the delivery items, for any loss of profit, for any absence of savings, direct and consequential damage. Such limitations do not apply insofar as the damage is covered by our manufacturer liability insurance. We promise to maintain insurance coverage as existed on conclusion of the contract.
- 8.3. Above provisions are not associated with any reversal of the burden of proof to the disadvantage of the orderer.

9. Intellectual Property

- 9.1. We reserve unlimited rights to cost estimates, drawings and other documents. The access of third parties to such documents is subject to our prior written consent. All documents shall be returned to us immediately on request if the contract has not been concluded. The same is true for the documents of the orderer, which may, however, be made accessible to such third parties that we have been permitted to transfer deliveries to.
- 9.2. We grant the orderer the non-exclusive and non-transferable licence to use the delivered software with the agreed-upon performance characteristics in its original form and on the agreed-upon units of equipment. The orderer may produce two backup copies without explicit special agreement.
- 9.3. If a third party asserts rightful claims towards the orderer for the violation of industrial property rights or copyright (hereinafter called "property rights") by such goods that were delivered by us and are used as specified in the contract, we shall be liable towards the orderer as follows:
 - 9.3.1. We may choose to acquire the right of use for the delivery item or to modify the delivery item in such a way as to exclude any violation of the property rights or to replace the delivery item at our own expense. If none of the above proves possible at reasonable conditions, we shall take the delivery item back and reimburse the purchase price.
 - 9.3.2. These obligations shall apply only if the orderer informs us immediately in writing of the claims brought forward by the third party and if the orderer disclaims any violation and if the orderer reserves us the right to carry out all measures to avert danger and all negotiations to reach a compromise. If the orderer stops the use of the product in order to reduce damage of for other important reasons the orderer shall inform the third party of the fact that the discontinued utilization is not associated with any admission of violation of property rights.
 - 9.3.3. All claims by the orderer shall be void if the orderer is responsible for the violation of property rights or if the orderer has caused the violation by an by us unforeseeable use of the delivery item or by his changing of the delivery item or by his using the delivery item together with products not delivered by us.
- 9.4. Any further claims brought against us shall be excluded whereas clause 8 (Other Liabilities) and the right of the orderer to withdraw from the contract remain unaffected.

10. Venue; Place of Performance; Applicable Law

- 10.1. If the purchasing party is a businessman or a legal person under public law or a Federal Special Fund, the exclusive venue for all disputes directly or indirectly arising from the contract relationship shall be subject to our choice either our main office or one of our German subsidiaries. We shall also be entitled to file a lawsuit at the place of the orderer's home office.
- 10.2. Place of performance is D – 97999 Igersheim.
- 10.3. Applicable law shall be that of the Federal Republic of Germany excluding the UN Convention on Contracts for the International Sale of Goods (CISG).

11. Miscellaneous

- 11.1. We store the customer data (e.g. address and bank data) when entering into contractual relations and doing business with him.
- 11.2. Any transfer of rights and duties from the contract entered with us of and by the orderer is subject to our written consent.
- 11.3. The loss of legal force of individual parts of the contract shall by no means affect the validity of the remaining provisions. This does not apply if the adherence to the contractual provisions presents an undue hardship to one of the parties.

WITTENSTEIN aerospace & simulation GmbH
Walter-Wittenstein-Straße 1
D-97999 Igersheim · Germany