

## **General Standard Terms and Conditions**

### **I. Standard provisions**

1. For the scope of supply or service (hereinafter: supply) the mutual written statements are authoritative. The buyer's standard business terms only apply however to the extent that the supplier or service provider (hereinafter: supplier) has expressly consented to them in writing. Even if supplier makes reference to a letter containing or referring to buyer's or third party's standard business terms, this shall not be construed as consent to applicability of those standard business terms.
2. All supplier quotations are subject to alteration and non-committal unless they are explicitly stated to be binding or if they feature a particular acceptance deadline.
3. Any technical particulars furnished by supplier or his subsupplier pertaining to the delivery item or service (e.g. technical data, weights, dimensions, serviceability, ratings and tolerances as well as depictions of these (e.g. drawings and graphs) are only approximately authoritative unless usability for the contractual purposes requires accurate conformity. These are not guaranteed quality features but instead descriptions or characterizations of supplies or services unless any such guarantees are explicitly made in writing. Customary deviations or any deviations based on statutory provisions or which constitute technical improvements as well as the substitution of component parts by identical other parts are admissible if the usability for the contractual purpose is not impaired. Any proprietary / special-purpose solutions must principally be approved in writing by both parties.
4. The supplier will provide technical advice to the best of his ability and knowledge. However, such technical advice shall be non-committal and will not release the buyer from conducting his own tests and trials. The buyer shall be responsible for compliance with statutory provisions and regulatory requirements when using our goods.
5. The supplier unrestrictedly reserves his commercial usage ownership rights and copyrights to cost estimates, drawings and other documents (hereinafter: documents). The documents may only be made available to third parties with the prior consent of the supplier and, should the order not be awarded, must be immediately returned to the latter on demand. Sentences 1 and 2 apply analogously to the buyer's documents; the latter may however be made available to third parties to which the supplier has legitimately entrusted supply.
6. The buyer has non-exclusive rights to use standard software with the agreed performance specifications in unmodified form on the agreed equipment. The buyer may make backup copies without any explicit agreement.
7. Partial deliveries are allowed as long as the buyer can reasonably be expected to accept them.

### **II. Prices and payment terms**

1. Prices are ex works exclusive of packing and plus the statutory VAT applicable at the time.
2. If the supplier has assumed responsibility for setup or assembly and unless otherwise agreed then the buyer bears, besides the agreed fee, all required ancillary costs such as travel expenses, costs for shipment of manual tools and personal luggage as well as per diem expenses.
3. Payments must be made free to the supplier's point of payment.
4. Unless agreed upon differently in writing, invoice amounts are due for payment within 21 days without any deductions. Written cash discount payment arrangements are always based on the net goods value. There is no cash discount on metal surcharges. The date supplier receives payment shall be decisive for determining the payment term. Payments by checks shall be considered made only after check is redeemed. If the buyer fails to pay in due time, the due amounts from the day they are due shall bear interest in amount of 5% p.a.; the right to assert higher interest and claims to compensation for damages in the event of such delay shall remain in effect.
5. The buyer may only set off such claims as are uncontested or have been definitively adjudicated.

6. If the supplier after conclusion of the contract becomes aware of circumstances which might significantly impair buyer's creditworthiness and which put at risk buyer's payment of supplier's accounts receivable from the contractual relationship at issue (including separate orders under the same master agreement), the supplier shall be entitled to provide pending deliveries or services only against advance payments or after furnishment of collateral.

### **III. Retained ownership title**

1. The supply items (retained title goods) remain the supplier's property up through fulfilment of all claims on the buyer to which it is entitled in connection with the business transaction. Where the value of all collateral rights to which the supplier is entitled exceeds the amount of all collateralised claims by more than 20% the supplier will at the request of the buyer release a corresponding portion of the collateral rights.

2. As long as retained ownership title obtains the buyer may not pledge or assign title as collateral and may only resell to resellers in the course of its routine business and on condition that the reseller receives payment from its customer or makes the reservation that title will only pass to the customer when the latter has met its payment obligations.

3. If buyer processes the goods under retention of title, it shall be considered agreed that such processing is done in the name of and for account of the supplier as manufacturer and that supplier acquires ownership rights or – if such processing is done with material provided by several owners or if the value of the processed item is higher than the value of the goods under retention of title – co-ownership rights (ownership in fractional shares) to the newly created item. In the event the supplier acquires no such ownership rights, the buyer already now transfers his future ownership rights – or co-ownership rights as defined above – to the newly created items to the supplier as collateral. If the goods under retention of title are commingled or inseparably mixed with other items into one unified item and one of the other items must be considered the main item, the supplier, provided he has ownership rights to the main item, transfers to the buyer pro rata co-ownership rights to the unified item at the ratio stated in sentence 1.

4. In case of breach of obligation by the buyer, in particular in case of payment arrears, the supplier is entitled, after an appropriate deadline set for the buyer has passed in vain, to cancel further performance and repossess; this is without prejudice to statutory provisions on the dispensability of setting a deadline. The buyer is obliged to surrender the goods.

5. In the event insolvency proceedings are instituted against the buyer's assets and the conditions stated in nos. 2 or 4 are in effect, the buyer will immediately disclose the following information: purchaser of delivery (also if pro-rated), date of sale, date of invoice payment and no. of bank account. If conditions stated in no. 3 are in effect, the following information will also be disclosed: time and purpose of processing, share of delivery in newly created product.

### **IV. Delivery deadlines, late delivery**

1. Compliance with delivery deadlines presupposes timely receipt of all documents, required permits and clearances to be supplied by the buyer, in particular of plans as well as compliance with agreed payment terms and other obligations by the buyer. If these conditions are not met on time then deadlines are extended appropriately; this does not apply if the supplier is responsible for the delay.

2. If failure to comply with deadlines is due to force majeure, e.g. mobilisation, war, insurrection or to similar events such as strikes and lockouts then the deadlines are extended appropriately.

3. If the supplier is late then the buyer, where the latter can credibly claim that it has sustained damages, may demand compensation for every completed week of later delivery by 0.5% each week for a total of 5% of the price for that section of the supplies that could not be put to appropriate use due to late delivery.

4. Both the buyer's damage compensation claims for delay in delivery as well as damage compensation claims in lieu of performance going beyond the limits cited in numeral 3 are in all cases of delayed delivery barred, including after passing of the delivery deadline set for the supplier. This does not apply where in cases of intent, gross negligence or due to injury to life, limb or health there is strict liability. The buyer may only withdraw from the contract in connection with statutory regulations where

the supplier is responsible for the delay in delivery. No shifting of the burden of proof to the detriment of the buyer is connected with the above provisions.

5. The buyer is obliged, at the demand of the supplier, to state within an appropriate deadline whether it wishes to withdraw from the contract due to delay in delivery or whether it insists on delivery.

6. If dispatch or delivery is delayed by more than one month of notification of readiness to ship at the request of the buyer, then the buyer may be charged for every month commenced a storage fee in the amount of 0.5% of the price of the delivery item for a total of 5%. The contract parties are at liberty to prove that storage costs were higher or lower.

## **V. Passing of risk**

1. Risk passes to the buyer, even where delivery is free of freight charge, as follows:

- a. For deliveries without setup or assembly, if it has been sent to shipping or has been picked up. At the request and cost of the buyer, deliveries are insured by the supplier against customary shipping risks.
- b. For deliveries with setup or assembly on the date of takeover for the buyer's own business or, where agreed, after a flawless trial run.

2. If dispatch, delivery, beginning or conduct of setup or assembly, takeover for the buyer's own business or the trial run are delayed for reasons for which the buyer is responsible or if the buyer for any other reasons is late then the risk passes to the buyer.

## **VI. Setup and assembly**

Applicable to setup and assembly, unless otherwise agreed in writing, are the following provisions.

1. The buyer must assume the costs for and provide on time:

- a. all ground, construction and other out-of-sector ancillary work, including the related specialists and auxiliaries, construction materials and tools,
- b. the consumables and materials required for setup and commissioning such as scaffolding, cranes and other devices, fuels and lubricants,
- c. energy and water at the point of use, including connections, heating and lighting,
- d. at the point of assembly for storing machine parts, apparatuses, materials, tools etc sufficiently large suitable dry and lockable premises and for assembly personnel appropriate work and accommodation areas, including sanitary facilities appropriate to the circumstances; beyond that, the buyer must for the protection of the supplier's and the assembly personnel's property at the construction site arrange for such measures as it would take to protect its own property,
- e. protective clothing and safety devices that are necessary in view of special conditions at the point of assembly.

2. Prior to commencement of assembly work the buyer must on its own initiation make available the necessary information on the location of concealed up electricity, gas and water piping or similar infrastructures as well as of the required static information.

3. Prior to commencement of setup or assembly the onsite provisions and items needed to start work must be located at the point of setup or assembly and all preliminary work prior to commencement of setup must have reached the stage where setup and assembly can be commenced according to the agreement and can be conducted without interruption. Access roads and the setup and assembly place must be levelled and cleared.

4. If setup, assembly or commissioning is delayed by circumstances for which the supplier is not responsible then the buyer must to an appropriate extent bear the costs of waiting periods and additionally required travel by the supplier or the assembly personnel.
5. The buyer must on a weekly basis certify for the supplier the duration of the times worked by assembly personnel as well as notify immediately of termination of setup, assembly or commissioning.
6. If the supplier after completion demands acceptance of delivery, then the buyer must proceed to do so within two weeks. If this does not occur, then acceptance is deemed to have been granted. Acceptance is likewise deemed to have occurred if the supply has been put to use, eventually upon conclusion of an agreed test phase.

## **VII. Taking of delivery**

The buyer may not refuse to take delivery of supplies due to insignificant flaws.

## **VIII. Physical flaws**

The supplier is liable for physical flaws as follows:

1. All those parts or performance must at the option of the supplier be subsequently improved free of charge, re-supplied or provided new which evidence physical flaws within the warranty period, without considering the duration of operation, provided that its cause already obtained when risk passed.
2. Physical flaw claims are time-barred after 12 months. This does not apply where the Civil Code prescribes longer time bars according to secs 438 (1) (2) (Structures and items for structures), 479 (2) (Regress claims) and 634a (1) (2) (Construction flaws) as well as in cases where there is injury to life, limb or health, in case of intentional or grossly negligent breach of obligation by the supplier and where a flaw has been maliciously concealed. This is without prejudice to statutory regulations on interruption, suspension and resumption of time bar periods.
3. The buyer must immediately report physical flaws to the supplier in writing.
4. In case of reports of flaws, the buyer's payments may be withheld to an extent that stands in an appropriate relation to the physical flaws that have occurred. The buyer may only withhold payments if a flaw is claimed whose justification is not in doubt. If the reporting of the flaw was not justified, then the supplier is entitled to demand reimbursement from the buyer of its expenses incurred.
5. Initially, the supplier must be granted the opportunity for subsequent fulfilment within an appropriate period of time.
6. If subsequent fulfilment fails, the buyer may, without prejudice to any eventual damage compensation claims in accordance with article XI withdraw from the contract or reduce the fee.
7. There are no claims due to flaws for insignificant deviation from agreed properties, where impairment of usability is insignificant, in case of natural wear and tear or damages sustained after the passing of risk due to improper or negligent handling, excessive overloading, unsuitable supplies, defective construction work, unsuitable building ground or which were caused by special external impacts not presupposed under the contract as well as with software errors that cannot be replicated. If modifications or repair work are improperly undertaken by the buyer or by third parties, then there are consequently no flaw claims for them or the consequences they cause.
8. Claims by the buyer for expenses required for subsequent fulfilment, in particular shipping, haulage, work and materials costs are barred where the expenses are higher because the item supplied was subsequently transferred to another venue than the buyer's establishment unless such transfer is in accordance with its intended use.
9. Regress claims by the buyer on the supplier under sec 478 of the Civil Code (Regress by entrepreneur) only obtain to the extent that the buyer has not reached any agreements with its customer going beyond the statutory flaw claims. Numeral 8 is additionally applicable mutatis mutandis to the scope of the regress claim by the buyer on the supplier under sec 478 (2) of the Civil Code.

10. Otherwise applicable to damage compensation claims is article XI (Other damage compensation claims). Other or additional buyer claims on the supplier or its agents exceeding claims regulated in article VIII due to any physical flaw are barred. This also applies to all consequential damage claims for flaws (such as lost production or revenue, other financial damages, etc).

## **IX. Intellectual property rights and patents, legal flaws**

1. Unless otherwise agreed, the supplier is only obliged to render supply in the national jurisdiction of the venue of delivery free of third-party intellectual property rights and patents (hereinafter: intellectual property rights).

Where a third party asserts justified claims on the buyer due to infringement of intellectual property rights by supply provided by the supplier and used in a contractually proper manner the supplier is liable in relation to the buyer within the period of time determined in article VIII, numeral 2 as follows:

- a. The supplier will at its option and its own expense either arrange for a usage right for the relevant supply or modify it in such a way that the intellectual property right is not infringed or replace it. If this is not possible for the supplier on reasonable terms, then the buyer is entitled to its statutory rights to withdraw or reduce.
- b. The supplier's obligation to provide damage compensation is governed by article XI.
- c. The supplier's obligations cited above only obtain if the buyer immediately notifies the supplier in writing of claims asserted by third parties, does not acknowledge any infringement and reserves all defensive measures and settlement negotiations for the supplier. If the buyer ceases to use the supply for damage limitation reasons or other important reasons, then it is obliged to draw the attention of third parties to the fact that cessation of use does not imply any acknowledgement of an infringement of rights.

2. Buyer claims are barred where the buyer is responsible for the infringement of intellectual property rights.

3. Buyer claims are furthermore barred where the infringement of intellectual property rights is caused by the buyer's special specifications, by any use not foreseen by the supplier or by the fact that the supply was modified by the buyer or used together with products not supplied by the supplier.

4. In case of intellectual property rights infringements, the provisions in article VIII, numerals 4, 5 and 9 apply mutatis mutandis to buyer claims regulated in numeral 1 a).

5. Where other legal flaws obtain, the provisions of article VIII apply mutatis mutandis.

6. Claims on the supplier or its agents going beyond this or other than those regulated in this present article IX due to a legal flaw are barred.

## **X. Impossibility of performance, adjustment of the contract**

1. Where supply is not possible the buyer is entitled to demand damage compensation unless the supplier is not responsible for such impossibility. However, the buyer's damage compensation claim is limited to 10% of the value of that portion of the supply that cannot be put to reasonable use due to such impossibility. However, this limitation will not apply in cases where there is strict liability for intent, gross negligence or for injury to life, limb or health; no shifting of the burden of proof to the detriment of the buyer is connected with the above provisions. This is without prejudice to the buyer's right to withdraw from the contract.

2. Where unforeseeable events within the meaning of article IV, numeral 2 significantly modify the commercial importance or content of the supply or significantly impact on the supplier's business the contract will be adapted giving due regard to good faith. Should this not be economically feasible the supplier is entitled to withdraw from the contract. If it wishes to avail itself of this right to withdraw it must immediately inform the buyer thereof upon realisation of the consequences of the event, even in such cases where initially an extension of the delivery deadline was agreed with the buyer.

## **XI. Other damage compensation claims**

1. Damage and cost compensation claims by the buyer (hereinafter: damage compensation claims), regardless of their legal grounds and in particular for breach of obligations under the contractual relationship and for illicit action are barred.

2. This does not apply where there is strict liability, e.g. under the Product Liability Act, in cases of intent, gross negligence or for injury to life, limb or health or for breach of essential contractual obligations. The damage compensation claim for breach of essential contractual obligations is however limited to contractually typical and foreseeable damage, unless there is intent or gross negligence or there is liability for injury to life, limb or health. No shifting of the burden of proof to the detriment of the buyer is connected with the above provisions.

3. Where the buyer is entitled to damage compensation claims under this present article XI such claims will be time barred with the statute of limitations applicable to physical flaw claims according to article VIII, numeral 2. Statutory statutes of limitation apply to damage compensation claims under the Product Liability Act.

## **XII. Proper forum and applicable law**

1. The sole proper forum is in the courts of D-64720 Michelstadt.

2. German substantive law applies to legal relationships in connection with this contract, with the UN Convention on the International Sale of Goods (CISG) barred.

## **XIII. Binding nature of the contract**

In case of the lack of legal effect of specific provisions the contract remains binding in its remaining provisions. This does not apply if maintenance of the contract would constitute an unreasonable hardship for either party.

HIK GmbH  
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