

## **Terms and Conditions for Supplies and Services (II1a)**

### **I. Offer**

The following terms and conditions are applicable for all offers, supplies – also those made in future – as well as the corresponding performances. Deviating terms and conditions valid at the customer which have not been expressly approved in writing by the supplier shall not be binding - not even if the supplier did not expressly object to these.

Unless expressly specified as being binding, all documents belonging to the offer, such as illustrations, drawings, weights and dimensions, performance and consumption data shall only roughly be authoritative as far as they have not been determined explicitly as binding; in no case do they represent a warranty according to §443 BGB (German Code of Civil Law). The supplier reserves the property and copyright existing on cost estimates, drawings and other documents and information – also in electronic form. These documents must not be disclosed to third parties. The supplier is bound to disclose plans identified as confidential by the customer to third parties only after written approval by the customer.

In case the order confirmation refers to international commercial terms (e.g. FOB, CIF, etc.) the contents of those terms shall be as defined in Incoterms 2000.

### **II. Scope of supplies**

The scope of supplies shall be as laid down in the written order confirmation of the supplier. If the supplier submitted an offer being valid for a limited period of time and requesting timely acceptance, the offer shall be valid in that form - unless the order confirmation has been received in time. Promised properties, collateral agreements and changes have to be confirmed in writing by the supplier to become effective.

The supplier reserves the right of changing the design and shape of the goods to be supplied provided the goods to be supplied will thereby not undergo significant changes and the customer can be reasonably expected to accept such change.

### **III. Prices and payment**

1. Unless otherwise agreed upon, the prices are for delivery ex works, incl. loading in the plant and excluding packing. The statutory value-added tax will be added to the prices specified. The supplier's prices valid on the day of dispatch will be invoiced. The packing will be charged at cost price and cannot be returned.
2. Unless otherwise agreed upon, payment shall be made cash without any deduction free supplier's domicile, i.e.  
30 % down payment after receipt of the order confirmation  
60 % as soon as the customer has been notified that the majority of goods ordered are ready for dispatch  
the balance within 14 days after transfer of perils
3. All charges shall be born by the customer.
4. The customer shall not be entitled to withhold payments or to offset payments against claims, if any, brought forward by the customer but rejected by the supplier, unless these claims are legally binding. A payment is only deemed paid as soon as the full invoice amount is credited to the supplier's account irrevocably.
5. In case of default by the customer still outstanding payments shall become due immediately. In case of instalment terms, this provision shall be applicable if the customer is in default with the 1st instalment. The balance of debt shall become due as well if bills of exchange have been drawn which are due at a later date. Irrespective of the reservation of his ownership, the supplier can withdraw from the contract and request damages for non-performance. Interest on arrears will be charged at 8% according to the base lending rate.
6. Down payments: In the case of a withdrawal shall all costs resulting from the order, up to the date of cancellation as well as loss of profit, be settled using the down payment. ( the costs include those of manufacture, administration, financing, materials, etc.)
7. Should the financial circumstances of the customer deteriorate considerably which leads to the pecuniary claim of the supplier being at risk the supplier has the right to withhold the delivery until payment has been made or a sufficient payment guaranty is at disposal.

### **IV. Delivery time**

1. The delivery time begins with dispatch of the order confirmation but not earlier than submittal of the documents, permits, releases to be provided by the customer and not before receipt of the down payment agreed upon. Furthermore all technical and commercial questions have to be cleared. Correct and punctual deliveries by our own suppliers as well as the supply of energy and resources shall be reserved for the compliance with the delivery terms.
2. The delivery time shall be considered maintained provided the goods to be supplied left the works prior to termination of that period or a notification has been sent about readiness of the goods for shipment.

**Terms and Conditions for Supplies and Services\_II1aeng[2]new..e.doc page 2 of 5, date of issue 09.02.2007**

3. The delivery time shall be reasonably extended in case of labour disputes, especially strikes and lockout as well as occurrence of unforeseen hindrances which are beyond the supplier's control. This provision shall also be applicable in case such circumstances occur at sub-suppliers. The supplier shall not be liable for the above circumstances either, in case they occur during an already existing delay. The supplier will inform the customer in important cases as soon as possible on the beginning and termination of such hindrances.
4. In case the customer suffers damage due to a delay for which the supplier is liable, he shall be entitled to claim compensation for default to the exclusion of further claims. For each full week of delay such compensation shall amount to 0.5% - but no more than 5% at a maximum - of the value of the item of the complete supply concerned which, as a result of the delay, cannot be used in time or in compliance with the contract provisions. Provided the preconditions laid down in fig. IX. 2 have been fulfilled; the exclusion of further claims shall not be valid.
5. In case shipment is delayed at the request of the customer, costs resulting from storage/month will be invoiced to the customer - starting one month after notification about the goods being ready for shipment. In case the goods are stored at the supplier's works, at least ½ % of the invoice amount will be charged for every month.
6. Maintaining the delivery time requires the customer to fulfil his obligations from the contract.
7. In the event that the customer delays acceptance of the subject matter of the contract or fails to fulfil his obligations to pay for more than 6 weeks after notification about readiness of the goods to be supplied, the supplier shall be entitled to withdraw from the contract and to request damages for non-performance after granting a grace period of 2 weeks. If the supplier requests damages for non-performance, he shall be entitled to claim 15% of the sales price as compensation - irrespective of the right in fact to claim a higher amount. Furnishing proof of the damage shall not be required. In the event that the supplier does not make use of the right just mentioned he shall - irrespective of his other rights - be entitled to dispose freely of the subject matter of the contract and to supply instead an equal object at the terms and conditions of the contract within a reasonable period of time.

**V. Passing of risk and acceptance**

1. The risk passes to the customer upon dispatch of the goods at the latest even in case of partial deliveries being made or if the supplier assumed additional services, e.g. shipping cost or delivery or installation. At the request of the customer the consignment will be ensured by the supplier against theft, breakage, damage during transport, by fire or water as well as other insurable risks.
2. In case shipment is delayed for reasons for which the customer is responsible, the risk passes to the customer with the date of readiness for shipment. However, the supplier is bound to take out the insurances requested by the customer at the expense of the latter.
3. Goods dispatched must be accepted by the customer even if they display minor defects irrespective of the rights stipulated in Section VIII below.
4. Partial deliveries shall be allowed.

**VI. Reservation of ownership**

1. The supplier retains the property in the goods to be supplied until all claims from the transaction of the supplier against the customer have been settled. This shall also be applicable if individual or all claims of the supplier have been included in a current account and if the balance has been struck and accepted. If the customer acts contrary to the terms of the contract - in particular, in case of default in payment, the supplier shall - after a reminder - be entitled to take the supplied goods back and the customer is bound to return the goods concerned. All costs of recovery of possession shall be to the account of the manufacturers. Taking back and seizure of the goods by the supplier shall only then be considered withdrawal from the contract on the condition that the supplier made an express written statement to that effect. In case of seizures or interference by third parties, the customer shall immediately notify the supplier in writing and submit all necessary explanations. The customer must not give the supplied goods in pledge or assign these by way of security.
2. In case cross liability of the supplier is claimed in connection with payment of the purchase price by the customer, the reservation of ownership with all special provisions agreed upon and other securities for safeguarding payment shall only become extinct after payment of the bill by the customer as drawee.
3. The customer shall be entitled to resell the supplied goods in an ordinary course of business. However, he transfers already now all claims with all ancillary rights to the supplier which have arisen from the resale towards the purchaser or third parties irrespective of whether the reserved goods are resold before or after processing. The customer shall be entitled to recover these claims also after assignment. The right of the supplier to recover the claims himself shall remain unaffected by the provision. However, the supplier undertakes not to recover the claims as long as the customer properly fulfils his obligations to pay. The supplier may request that the customer informs him on the assigned claims and the corresponding debtors, submits all information necessary for the recovery, hands out all relevant documents and notifies the debtors of the assignment. In case the supplied goods are resold jointly with other

**Terms and Conditions for Supplies and Services\_II1aeng[2]new..e.doc page 3 of 5, date of issue 09.02.2007**

goods which are not the property of the supplier, the claim of the customer against the purchaser shall be considered assigned to the amount agreed upon as supply price between supplier and customer.

4. The supplier undertakes to release all securities to which he is entitled to the extent their value exceeds the not yet settled claims of the secured claims by more than 20%.
5. Provided national laws require doing so, the customer agrees that this reservation of ownership is registered at the competent institution (notary public, court or the like).
6. During the reservation of title, the goods held by us under our ownership must be insured by the buyer against fire, water and theft by breaking and entering. The rights arising from this insurance are irrevocably transferred to us. We hereby accept said transfer.

#### **VII. Delivery and installation**

1. If the supplier undertook to install the goods concerned, he has to start installation only after the foundations have become completely dry and set and after all other construction work has been completed so that installation and start-up can be carried out. Failure to complete the above jobs in time means that the period agreed upon for installation and start up shall be reasonably extended.
2. Unless otherwise agreed upon, the goods to be supplied shall be transported from the supplier's workshops to the place of use to the account and at the risk of the customer.
3. If the supplier is responsible for installation or start-up, he shall provide the necessary erection staff and tools at the expense of the customer. Tools, lifting appliances, scaffolds, equipment, building material, welding sets, bottled gas for pipeline work, etc. shall be supplied by the customer at his expense and risk. He shall also make a suitable, lockable storage room for the erection tools available. He shall be liable for the unskilled workers provided by him.
4. In the event that transport, installation or start-up of the machine are delayed or interrupted or if the work of the erection staff is hindered without any fault on the part of the supplier, all extra costs and damage attributable to the above delay, interruption or hindrance shall be to the account of the customer. The obligation to maintain the periods agreed upon for payment shall remain unaffected.
5. In case the supplier also undertook to carry out trial operation and/or trial run, these jobs shall be done during the normal working hours. In case the erection staff has to work beyond normal working hours because of specific circumstances, the extra hours shall be invoiced separately as overtime work. The customer has to supply the conditions for a proper trial run (for example supplying materials, energy, water, back staff, etc.). Otherwise he has to bear the arising additional costs.
6. Overtime shall be worked by the erection staff only if expressly requested and confirmed by the customer to the supplier and the erection staff.

#### **VIII. Liability for defects of the supply**

The supplier shall be liable for defects of the supply including the lack of expressly promised properties to the exclusion of further claims and irrespective of the provisions of Section IX, as stipulated below:

1. All those parts shall be repaired or delivered new at no cost at the discretion of the supplier which turned out to be useless or significantly impaired as to their merchantability as a result of circumstances which occurred prior to passing of the risk, especially due to faulty design, improper materials or poor workmanship. After such defects have been noticed the supplier shall immediately be notified in writing on the kind of the defects occurred as well as on possible causes. Replaced parts become the property of the supplier. The liability expires 12 months after delivery. Concerning major products purchased from outside, the supplier's liability shall be restricted to the assignment of liability assumed by the supplier of the products purchased from outside.
2. Any claims under warranty fall under the statute of limitation in all cases within one year from the time of the notification of defect if made in due time, but no sooner than upon expiration of the warranty period.
3. No liability will be assumed for damage due to the following reasons: Inappropriate or improper use, faulty assembly and/or start-up by the customer or third parties, installation of spare parts of outside origin, normal wear and tear, faulty or negligent treatment, inappropriate maintenance, inappropriate operating media, replacement materials, poor construction work, unsuitable subsoil, chemical, electro-chemical or electrical effects unless the supplier is responsible for these.  
Furthermore the supplier is not liable for subsequent damages and indirect damages that arose due to lacks of the delivery. In particular the supplier does not accept any liability for missed profit, loss of interest, loss of production, cost increase, claims of fulfillment assistants or subcontractors, standstill and/or waiting periods.
4. After agreement with the supplier, the customer shall offer the supplier the necessary time and opportunity for carrying out all amendments and replacements which appear fair to the supplier. Otherwise, the supplier will be discharged from liability for defects. The customer shall only be entitled to eliminate the defect himself or have it eliminated by third parties in urgent cases of endangered

**Terms and Conditions for Supplies and Services\_II1aeng[2]new..e.doc page 4 of 5, date of issue 09.02.2007**

- operational safety or to prevent disproportionate damage or if the supplier did not eliminate the defect in time. If so, the supplier shall be notified accordingly without delay. The customer shall then have the right to request the supplier to take over the costs involved.
5. Provided the complaint turns out to be justified, the supplier shall take over the direct costs of the replaced part including dispatch and the reasonable costs of dismantling and installation arising from the above mentioned amendments and replacements. Moreover, he shall take over the cost of providing his erection staff and unskilled workers in case this can reasonably be requested in view of the specific situation. The balance of costs shall be to the account of the customer.
  6. The warranty period for the replaced part and the amendment amounts to one year from the beginning of limitation of time according to law and shall at least last until termination of the original warranty period for the goods supplied.
  7. The liability term for defects assumed for the goods supplied shall only be extended by the time of breakdown attributable to the repair work. Also the period of the liability for defects for the goods supplied does not start again neither is it prolonged in any other way than described (namely prolongation for time of operation stop) due to the assembling of spare parts and amendments.
  8. There will be no liability for the consequences of modifications or repairs improperly carried out by the customer or third parties without prior approval by the supplier.
  9. Should seller's supply be impeded by any intellectual property rights in the inland, the seller at its expense shall undertake to obtain a license for the customer or he shall modify the supply to make it non-infringing. Should this be impossible under economically appropriate conditions or within an appropriate period of time shall the customer have the right to withdraw from the contract. Under the above mentioned conditions also the seller shall have the right to cancel the contract. Furthermore the seller will indemnify the customer from indisputed, legally binding claims from the corresponding holders of the trademark right.
  10. The seller's obligations stated in section 10 are terminal subject to section IX.2 for the case of infringement of any intellectual property rights. They are only applicable if:
    - The customer informs the seller immediately on all claimed infringements of intellectual property rights
    - The customer supports the seller appropriately with defending such claimed infringements of intellectual property rights or enables the seller to modify the supply according to section 8.7
    - The seller reserves the right of taking all necessary steps of defence including amicable arrangements
    - The defect of title has not been caused by any instruction or design of the customer
    - The infringement has not been caused by the customer's arbitrary modification of the supply or inappropriate use which did not correspond to the contract

#### **IX. Liability**

1. In the event that the customer cannot use the supplied goods for the intended purpose due to the supplier's fault because suggestions and advice given prior to or after conclusion of the contract and other collateral obligations under the contract have been omitted or unsatisfactorily carried out – especially instructions for operation and maintenance of the goods supplied – the provisions of sections VIII and IX.2 shall accordingly be valid to the exclusion of further claims by the customer.

2. The supplier only takes over liability for damage which did not occur on the supply itself, regardless of the legal grounds, if the damage was caused by:

- Intent
- Gross negligence by the owner / institutions or senior executives
- Acts of culpable harm to life, limb and health
- Faulty supply as far as liability is taken over for damage to persons or property for privately used objects according to the Product Liability Act

For culpable harms to considerable obligations of the contract the seller also takes over liability for gross negligence by non-senior staff as well as for slight negligence; the latter case is only applicable limited to the contract coherent, reasonably predictable damage. These are the customer's exclusive remedies.

#### **X. Right of the customer to terminate the contract**

1. The customer can terminate the contract if the supplier is finally unable to render the complete service prior to passing of the risk. The same shall apply if it is subjectively impossible for the supplier to supply the goods. The customer may also terminate the contract if - when ordering similar objects - execution of part of the supply becomes impossible by number and he consequently has a legitimate interest in rejecting a partial delivery. If this is not the case, the customer can reduce the payment accordingly.
2. In the event of delay of performance in the sense of Section IV of these terms and conditions for supplies and services and if the customer grants the supplier who is in default a reasonable grace period with the explicit statement that acceptance of the service will be rejected after termination of that period, and if the grace period is not maintained by the supplier, the customer shall be entitled to terminate the contract.

**Terms and Conditions for Supplies and Services\_II1aeng[2]new..e.doc page 5 of 5, date of issue 09.02.2007**

3. In case subjective impossibility of the supplier to render the service occurs during delayed acceptance or due to a fault of the customer, the latter shall nevertheless be bound to make payment.
4. The customer shall moreover be entitled to terminate the contract if the supplier lets the reasonable grace period granted to him for amendments or replacement for a considerable defect for which he is responsible according to these terms and conditions for supplies and services expire due to his fault. The right of the customer to terminate the contract shall also exist in case of subjective impossibility or inability of the supplier to make the repair or the replacement.
5. Any other farther-reaching claims by the buyer, in particular those regarding warranty and damages of any type, including those not caused by the delivered articles, are excluded.  
This liability exclusion shall not apply if and in as far as the conditions of cif. VIII.2 are met.

**XI. Use of Software**

1. As far as software is part of the scope of supply the customer is granted the exclusive right to use this software including the corresponding documentation. It will be relinquished to the customer for use on the determined supply. The use of the software on more than one system is prohibited.
2. The customer may only duplicate, amend, translate the software or change its object code into the source code as far as this is legally acceptable (§§ 69 a ff. UrhG = German Copyright Law). The customer undertakes not to remove or modify manufacturers' instructions, in particular the copy right statements, without the seller's prior explicitly stated agreement.
3. All other rights and titles to the software and documentation including their copies remain with the seller or with the software supplier. It is not allowed to award sublicences.
4. The seller's liability for loss of data is limited to time and effort of reconstruction in case of appropriate safeguarding which has to be executed by the customer.

**XII. Statute of limitations**

All claims by the customer – due to which legal grounds whatsoever – shall become statute-barred within 12 months. For acts of gross negligence or fraudulent intent as well as for claims according to the Product Liability Act the statutory periods are applicable. Those are also applicable for defects of a building or of supplies which have been used for a building in accordance with the typical use and have caused its defects.

**XIII. Partial invalidity**

A contract concluded on the basis of these terms and conditions shall remain binding even if individual provisions have become ineffective.

**XIV. Place of performance, disputes**

The supplier's works shall be the place of performance.

The place of jurisdiction shall be the court having jurisdiction over the place of business of the seller. Both parties have, however, the possibility of having all disputes arising out of this contract or its validity finally settled in accordance with the Arbitration Rules of the German Institution of Arbitration e.V. (DIS) without recourse to the ordinary courts of law. German Law is imperative.