

General Terms and Conditions of Delivery and Payment of Dipl.-Ing. Herwarth Reich GmbH Maschinenfabrik Bochum

§ 1 Scope

These general terms and conditions of delivery and payment shall apply exclusively. Any Purchaser's terms and conditions which may be inconsistent herewith shall be of no effect.

§ 2 Offers and Orders

1. All offers and orders shall be valid only for the binding period stated therein and are otherwise without engagement.
2. No order shall be deemed to be accepted unless it has been confirmed in writing by the Supplier. The Supplier's written acknowledgement of order shall govern the actual scope of supply. Revisions, supplements or oral agreements shall also be subject to written acceptance by the Supplier.
3. All offers, drawings or other information shall remain the Supplier's property and copyright and shall not be disclosed to any third party. The Supplier agrees not to disclose drawings or information classified as confidential by the Purchaser to any third party without the Purchaser's express permission.

The Purchaser shall accept full responsibility for information, templates, patterns, samples and the like which are provided by himself.

§ 3 Scope of Supply

The Supplier's written acknowledgement of order shall govern the actual scope of supply, or, in the absence of a timely acknowledgement of order, the Supplier's offer with the proviso that a time limit on acceptance shall have been stated therein and that the offer shall have been accepted in due time. Subagreements and/or revisions shall be subject to written confirmation by the Supplier.

§ 4 Prices and Terms of Payment

1. Unless otherwise specifically stated, the prices shall be understood ex works including in-house loading but exclusive of packing and exclusive of the legal value-added tax imposed in the country concerned.
2. The prices quoted in the offers and acknowledgements of order shall be based upon the costs in effect at the date of submission of the offer unless fixed prices have been agreed.

Any new rise occurring in the costs of raw materials, subcontracted products, wages, taxes, dues, attestations, fees, etc. up to the date of delivery and making the goods to be supplied more expensive, either direct or indirect, shall be at the Purchaser's expense, except where the Purchaser cannot pass the rising costs on or where less than 4 months lie between order and delivery.

Prices of previous or current orders shall not be binding for follow-up orders.

3. Unless otherwise specifically stated, payment shall be made cash, free Suppliers' paying bank, as follows:
 - a) Cash without any discount not later than 30 days from date of invoice or cash less 2 % discount within 10 days from date of invoice.
 - b) Mere wage labour such as assembly costs and freight costs shall be payable immediately on receipt of invoice without discount.
4. Withholding of payments or offsetting on account of any Purchaser's counterclaims, the rightfulness of which is contested by the Supplier, shall not be acceptable.
5. Failure to observe the agreed dates of payment shall entitle the Supplier, without prejudice to his other legal rights, to charge a default fee equal to the bank interest and charges in effect on open business credits while he shall be under no obligation to serve a special reminder.
6. Where the Purchaser fails to fulfil his liability to pay or fails to meet his commitments arising out of the property retention clause, the entire remaining debt, even including bills with later maturities, shall become due for payment.
7. In the event of cancellation of the contract, the fixed price less direct costs of that portion of work which still needs to be conducted by the Supplier for completion of the products on order, shall become immediately due for payment.
8. The costs incurred by cancellation or rescission of a contract shall be settled immediately on receipt of invoice.

§ 5 Delivery Time

1. The delivery time shall commence with the posting of the acknowledgement of order, but not before the procurement of documents, permissions, releases to be obtained by the Purchaser and/or before receipt of the agreed payment on account, if any.
2. The delivery time shall be deemed to have been adhered to when the goods to be supplied have left the works or when readiness for des-

patch has been advised before its expiration.

3. The delivery time shall be reasonably extended in the event of industrial strife, and strikes and lock-outs in particular, or in the event of any unforeseen circumstances outside the Supplier's control as far as such circumstances have an evidenced, substantial effect on completion or delivery of the goods to be supplied. The same shall apply to unforeseen circumstances encountered by subcontractors.

The Supplier shall neither be liable for the aforesaid circumstances even if they occur when progress of work is already delayed. The Supplier agrees to notify the Purchaser of the commencement and cessation of any important unforeseen circumstances as soon as possible.

4. Where the Purchaser sustains a loss that is attributable to a delay the Supplier is responsible for, the former shall be entitled to claim penalty to the exclusion of any further claims. The penalty shall amount to ½ % of the value of the complete scope of supply for each full week of delay but shall not exceed a total of 5 % as a maximum.
5. Where despatch is delayed on the Purchaser's request, he shall be charged for the costs incurred by storage or, where storage is at the Supplier's works, for not less than ½ % of the invoiced amount for each month of storage, commencing 1 month following the advice of readiness for despatch.

The Supplier shall nevertheless be entitled to dispose otherwise of the goods to be supplied after he shall have fixed a reasonable deadline and after fruitless expiration of the same and to supply the Purchaser within a reasonably extended period of time.

6. Adherence to the delivery time is conditioned upon the Purchaser fulfilling his contractual duties.
7. Any subsequent modifications requested by the Purchaser shall suspend the delivery time pending clarification of the said modifications whereupon the delivery time shall be reinstated.

§ 6 Transfer of Risk and Receipt of Goods

1. The risk shall be transferred to the Purchaser on despatch of the goods to be supplied at the latest, even if partial deliveries are executed or if the Supplier is still bound to other commitments such as assumption of the despatch costs or implementation of transport and/or assembly.

The Supplier shall insure the consignment against theft, breakage, transit, fire and water damages and any other insurable risks on the Purchaser's request and at his expense.

2. Where despatch is delayed due to circumstances the Purchaser is responsible for, the risk shall be transferred to the Purchaser on the day of readiness for despatch; the Supplier shall, however, take out the insurance policies requested by the Purchaser at the expense of the latter.
3. Delivered goods, even if they incorporate minor defects, shall be accepted by the Purchaser without prejudice to the rights arising out of the warranty liability.
4. Partial deliveries shall be admissible.
5. Despatch-related nonconformities shall be reported to the Supplier in writing immediately on receipt of the goods.

§ 7 Property Retention

1. It is agreed that title and right of possession to the goods supplied shall remain with the Supplier until all payments arising out of the contract and business relations have been received. The Purchaser shall neither put the goods supplied in pawn nor pledge them as security. In the event of seizure, confiscation or other third party decrees, he shall be obliged to notify the Supplier immediately thereof. Any behaviour of the Purchaser that may be contrary to the terms of contract including any delay in payment in particular, shall entitle the Supplier to recover the goods supplied after his having served a reminder and shall oblige the Purchaser to hand them over. Vindication of the property retention right and/or seizure of the goods supplied by the Supplier shall not be deemed as revocation of the contract.

Where Supplier's goods are combined with other components to form a complete system, it shall be taken for granted that the Purchaser transfers the pro rata coownership to the Supplier in the sense of § 947 article 2 BGB and keeps the system portion concerned in safe custody on the Supplier's behalf.

The Purchaser shall insure the goods supplied against all pertinent risks throughout the property retention period with the proviso that the Supplier shall be entitled to the rights arising out of the insurance contract on a pro rata basis. Policy and premium receipt shall be presented to the Supplier on demand.

3. Where the Purchaser in turn alienates the system in the ordinary course of business, either through installation of the system supplied or otherwise, he shall be obliged to notify the subsequent purchaser of the existing property retention in accordance with the foregoing article and to bind him accordingly.

- The Supplier shall be entitled to insure the goods supplied against theft, breakage, fire, water and other damages at the Purchaser's expense unless the Purchaser provides evidence that he has taken out the insurance policy by himself.

§ 8 Testing

All goods are submitted to a thorough dimensional and overall inspection at the Supplier's work before despatch. Parts ordered for acceptance by a classification society or acceptance authority are handled in accordance with their standards. The corresponding costs incurred shall be at the Purchaser's expense.

§9 Liability for Defects in Goods Supplied

The Supplier shall be liable for defects in goods supplied, including absence of any explicitly assured properties, to the exclusion of further claims and without prejudice to the provisions contained in § 9, subsection 4, as follows:

- All those parts shall be repaired or replaced free of charge at the Supplier's own discretion which have proved to be inoperative or significantly affected in their operativeness within 6 months from testing as a result of circumstances which occurred prior to the transfer of risk, particularly due to faulty design, substandard material or workmanship. Any such defects found shall be immediately reported to the Supplier in writing. Replaced parts become the Supplier's property.

If despatch, assembly or commissioning is delayed without the Supplier's fault, liability shall expire not later than 12 months following the transfer of risk.

For important subcontracted products, the Supplier's liability shall be limited to assignment of the liability claims which he is holding against the supplier of the subcontracted products except where gross negligence on the Supplier's behalf or an assured property is involved.

- The Purchaser's right to enforce claims by reason of defects shall become stale in any case 6 months from the date of prompt notification of complaint but on expiration of the warranty period at the earliest.

- No warranty claims shall be accepted for damage caused by:

improper or inexperienced application,
faulty assembly and/or repair by the Purchaser or any third party,
normal wear and tear,
wrong or careless handling,
unsuited operating materials,

substitute materials, inadequate site preparations, unsuited foundations, chemical, electrotechnical or electrical influences except where the said damage is due to a Supplier's fault.

- The Purchaser, following an agreement with the Supplier, shall give the latter reasonable time and opportunity for enabling implementation of all repairs and replacements deemed to be necessary at the Supplier's own discretion, as otherwise the Supplier shall be absolved of his liability for defects. It is only in emergencies when reliability of operation is at risk or when disproportionately large damages need to be averted, of which the Supplier shall be informed immediately, or when the Supplier is in delay with the rectification of a defect, that the Purchaser shall be entitled to rectify the defect either by himself or to have it rectified by a third party and to claim reimbursement of the reasonable costs incurred from the Supplier.
- Out of the direct costs incurred by repair and/or replacement, the Supplier shall bear the costs of the replacement part including despatch and reasonable removal and installation costs, provided that the complaint proves to be justified, and, in addition, the costs for making his assembly staff and assistants available, if the latter may be fairly expected on account of the given circumstances. Any other costs shall be at the Purchaser's expense.
- The warranty period for replacement parts and/or repairs is 3 months but shall by no means terminate before expiration of the original warranty period for the goods supplied. The liability period for defects in goods supplied shall be extended by the time for which operation was suspended due to the repair work.
- Alterations or repairs conducted inexpertly by the Purchaser or any third party and without the Supplier's prior permission shall absolve the Supplier of any liability for consequences arising therefrom.
- Further claims of the Purchaser, and especially claims for compensation of damages which have not occurred directly on the goods supplied, shall be excluded.

The foregoing exclusion of liability shall not apply to wilful acts or gross negligence on behalf of the owner or his executives or to negligent infringement of important contractual duties.

In the event of negligent infringement of important contractual duties, the Supplier shall be liable only for the reasonably foreseeable damage that is typical of the contract except where wilful acts or gross negligence on behalf of the owner or his executives are involved.

The exclusion of liability shall neither apply to those cases where the product liability law stipulates liability for injury to persons or damage to property on privately used objects in the event of defects in goods supplied, nor shall it apply in the event of absence of any explicitly assured properties when it was just this assurance that was aimed at securing

the Purchaser against damages occurring not directly on the goods supplied.

- Where the goods supplied cannot be used by the Purchaser as provided for in the contract due to the Supplier's fault and as a result of non-performance or faulty execution of proposals and/or consultations, before or after conclusion of the contract, or of any other contractual subagreements, and instructions for operating and maintaining the goods supplied in particular, the foregoing provisions contained in § 7 and § 9 shall apply accordingly to the exclusion of further claims by the Purchaser.

§ 10 Purchaser's Right of Revocation, Rescission and other Supplier's Liabilities

- The Purchaser shall be entitled to revoke the contract where complete performance becomes finally impossible for the Supplier prior to the risk of transfer which shall also include inability of the Supplier. The Purchaser may also revoke the contract where products of the same kind are on order and where execution of part of the delivery becomes impossible due to the quantity involved or where he has a lawful interest in the rejection of a partial delivery; the Purchaser, if he refrains from rejection, shall be entitled to reduce the consideration accordingly.
- Where performance is delayed in the sense of § 5 of the terms and conditions of delivery, the Purchaser shall be entitled to revocation after he shall have granted the Supplier failing to complete within the contractual period a reasonable extension of time with the specific statement that acceptance of the performance would be rejected following expiration of the said extension and when the said extension has expired after all.
- If the impossibility occurs during default of acceptance or due to a Purchaser's fault, the latter shall remain liable to consideration.
- The Purchaser shall also be entitled to revoke the contract when the Supplier, after having been granted a reasonable extension of time for repair or replacement in conjunction with a defect he is responsible for in the sense of the terms and conditions of delivery, lets the said extension pass to no avail due to his fault. The Purchaser's right of revoking the contract shall also be enforceable in all other events of repair or replacement failures on behalf of the Supplier.
- Any further claims of the Purchaser, and especially claims for termination or impairment of value or for compensation of damages of whatever nature including those which have not occurred directly on the goods supplied, shall be excluded.

The foregoing exclusion of liability shall not apply to wilful acts or gross negligence on behalf of the owner or his executives or to negligent infringement of important contractual duties.

In the event of negligent infringement of important contractual duties, the Supplier shall be liable only for the reasonably foreseeable damage that is typical of the contract except where wilful acts or gross negligence on behalf of the owner or his executives are involved.

The exclusion of liability shall neither apply to those cases where the product liability law stipulates liability for injury to persons or damage to property on privately used objects in the event of defects in goods supplied, nor shall it apply in the event of absence of any explicitly assured properties when it was just this assurance that was aimed at securing the Purchaser against damages occurring not directly on the goods supplied.

§ 11 Supplier's Right of Revocation

In the event of unforeseen circumstances in the sense of § 5 subsection 3 of the terms and conditions of delivery, the Supplier shall be entitled to revoke the contract in whole or in part where the said circumstances change the commercial importance or scope of performance substantially or have a considerable effect on the Supplier's operations or where execution turns out to be impossible at a later date.

The Purchaser shall not be entitled to claim compensation of damages by reason of such revocation. The foregoing exclusion of liability shall not apply to wilful acts or gross negligence on behalf of the owner or his executives or to negligent infringement of important contractual duties.

§ 12 Place of Performance and Venue

Any disputes arising out of the contract shall come within the jurisdiction of the competent court at the place of the Supplier's registered office when the Purchaser is a general merchant, body corporate or public corporation.

The Supplier shall also be entitled to institute legal proceedings at the place of the Purchaser's registered office.

§ 13 Nonassignment of Contractual Rights

The Purchaser shall not assign his contractual rights to any third party without the Supplier's express permission.

§ 14 Governing Law

The contract shall be interpreted and governed by the laws of Germany except where it may be inconsistent with imperative statutory provisions.

Bochum, 01.08.2001