

**1. General Remarks**

**1.1** The present GTC apply towards are subject to persons that act - in either commercial or self-employed occupation - as enterpriser, as well as towards legal persons of the public right or a special fund under public law. These GTC are subject to all deliveries and service concerning sales agreements, service contracts and contracts for work and materials - also including future services. The Vendor explicitly objects to the Terms and Conditions of the Buyer, even in case he has not acted.

**1.2** Unless otherwise agreed the usual terms of the International Chamber of Commerce in the latest form will apply. The vendor's written confirmation of order is authoritative as long as there are no other written agreements.

**1.3** The Buyer shall be obliged to take over the whole responsibility for the provided documents, like e.g. drawings, samples or suchlike. He has furthermore to care that the presented information will not touch the industrial property rights of a third party. The Vendor shall not be obliged towards the Buyer to check if the rights of a third party will be infringed in case of submitting offers on the base of sent in information and execution. In case a claim will nonetheless result the Buyer has to release the Vendor hereof.

**1.4** The offers of the Vendor are always subject to change. Conclusions of an agreement and further agreements, especially verbal additional agreements and warranties made by associates or representatives will only become binding with our written confirmation.

**1.5** The dimensions in the offers or documentations of the Vendor correspond to the current norms of the delivery. The adaptation to a potentially deviant standardization is subject to later modifications.

**1.6** The drawings, illustrations, technical data, descriptions of weight, dimension and performance published by the Vendor shall only be approximately authoritative, unless they are explicitly referred to as binding in the order confirmation. With these documents the Vendor reserves the right of proprietorship and copyright; they may not be made accessible to a third party.

**2. Prices**

Unless otherwise agreed – the prices are understood inclusive of loading ex supplying factory. All additional costs like e.g. transportation, packaging, customs, assembly, insurance rate etc., as well as VAT will be charged extra.

**3. Terms of Payment**

**3.1** Unless otherwise agreed – invoices have to be paid in full within 14 days after the invoice date.

**3.2** In case of delayed payment the Vendor shall be entitled to charge interest in the amount of the particular bank rate, at least, however, interest in the amount of 8 % over the particular rediscount rate of the European Central Bank. The assertion of a more severe damage caused by delay remains excepted. § 353 shall remain untouched.

**3.3** If the Vendor's entitlement to receive service in return is put at risk by the Buyer he shall be entitled to refuse the service for the time the service in return has been made or a security has been given. In case the Buyer is - although asked - neither ready to give a security nor to do a step-by-step fulfillment, the Vendor shall be entitled to withdraw from the contract.

**3.4** The Buyer's right of retention in reasonable extend is acceptable only according to the referred contract. Setting off against counterclaims shall only be permitted insofar as the Vendor has accepted them as payable and legally binding.

**4. Conditions of Delivery**

**4.1** The stated delivery time is generally estimated unless stated as a fixed delivery date.

**4.2** Furthermore the obligation concerning the agreed delivery time shall only be taken over in case of an undisturbed operating schedule and in case of the usual transport facilities. Other acts of nature beyond control and other unexpected events on the part of the Vendor or the transport company of the Vendor such as traffic hold ups, operation troubles, fire, floods, the lack of labor force, raw material or energy, strike, official actions shall release the Vendor from on-time delivery and shall entitle

him to prolong the delivery period or rather cease the delivery partly or completely without compensation and without subsequent delivery obligation.

**4.3** In case of the Buyer's default of acceptance the risk of the goods such as coincidental destruction, impairment or similar damages shall pass to the Buyer. In case of the Buyer's delay of payment regarding other deliveries the Vendor shall be entitled to reserve the right to modify the terms of payment unilaterally and furthermore he shall be entitled to deliver differently approved goods only against cash in advance or to refuse the delivery completely. The same applies in case of a bankruptcy filing on the part of the Buyer.

**4.4** The Vendor shall be entitled to reserve the right to carry out partial deliveries if the partial delivery can be used on its own and if there is no connection with parts of the order that are out of stock.

**5. Consignment and Passing of the Risk**

**5.1** The packaging is effectuated in usual manner and will be charged separately.

**5.2** The delivery of the contractual product will be effectuated at the expense and at the risk of the Buyer. The risk passes with the transfer of the contractual product to the freight carrier, at the latest, however, by leaving the factory or storage. In case of a delayed dispatch due to the Buyer's fault the risk already passes with the note of readiness for dispatch to the Buyer.

**5.3** The product that has been made ready for dispatch must be called up immediately. Otherwise the Vendor shall be entitled to dispatch at his own choice or to store it at the Buyer's risk and expenses and to charge immediately.

**5.4** Transportation insurances will be made only on the basis of a written agreement for the Buyer and for his account. That regulation applies also to an arranged delivery free Buyer.

**6. Reservations of Title**

**6.1** All deliveries made by the Vendor shall be subject to reservation of title and stay reserved goods until all claims of the business connection are fulfilled. With an open account the reserved property serves as security for the outstanding balance claim of the Vendor. The same applies to contingent liabilities of any kind the Vendor accepts for the Buyer.

**6.2** The processing of the reserved good is carried out according to §§ 950 BGB, without binding the Vendor. The processed goods are considered to be reserved goods according to 6.1.

**6.3** In case the delivered contractual product is connected to other products while the proprietorship of the reserved good is ending the Buyer transfers the co-ownership at the rate of the invoice value to the total value of the new object to the Vendor and furthermore stores these goods free of charge for the Vendor. The herewith created goods are considered to be reserved goods according to 6.1.

**6.4** The Buyer shall be entitled to sell the reserved good according to his usual business conditions and only within the schedule, provided that receivables resulting from the resale - including ancillary rights - are transferred to the Vendor according to 6 et seqq. The Buyer shall not be entitled to use the reserved good for other purposes. The usage of the reserved good in order to fulfill contracts for service is as well considered as a resale.

**6.5** The Buyer's receivables that are resulting from resale or because of another judicial reason, like e.g. reinsurance or unlawful act concerning the reserved good will be transferred in full to the Vendor at this point. They are used to safeguard to the same extend as the reserved good according to 6.1.

**6.6** In case the reserved good is sold by the Buyer together with other goods the Vendor shall be entitled to receive a receivable that results from the resale in the amount of the invoice amount. The Vendor receives co-ownership shares according to 6.3 on a value basis in case of the resale of goods.

**6.7** The Buyer shall be entitled to collect receivables from the resale unless the Vendor recalls the collection authorization. The Vendor shall be entitled to act like this in the case of the Buyer's outstanding payment, as well as in the case of an essential worsening of his capital. By request of the Vendor the Buyer shall be obliged to inform his customers immediately in case of an assignment of the claim and to

provide with the necessary information and documents needed for the collection of the claims. In the cases of outstanding payment or worsening of the capacity the Vendor shall be furthermore entitled to demand the return of the reserved good or the transfer of the indirect property at the Buyer's expenses. In these cases the Vendor shall be entitled to enter the office of the Buyer after prior notice and to secure the reserved good. Such actions are considered as cancellation of the contract, but only in case the Vendor declares so explicitly.

**6.8** The Buyer shall be obliged to inform the Vendor immediately about a garnishment or other interferences of the reserved good by a third party.

**6.9** The Vendor shall be obliged to release his securities by the Buyer's request and choice insofar, as the realizable value of the securities exceed the receivables that have to be secured by more than 20 % or their face amount by more than 50 %.

### 7 Liability, Warranty

The Vendor shall be liable for defects regarding the delivery in case the Buyer has fulfilled the examination and notice of non-conformity according to § 377 HGB (German Commercial Code) as follows:

**7.1** As far as a delivery item is defective the Vendor shall be entitled either to correct the defect or to deliver an item free from defects (subsequent fulfillment). At this it shall be a precondition that the deficiency is substantial.

Not considered as defects shall be customary product changes regarding measurements, weights and colors. These declarations are considered generally not as fixed and can vary.

Should one of the two or both kinds of subsequent fulfillment that are mentioned in 1 be impossible or unreasonable we shall be entitled to refuse it.

The Vendor shall be obliged to refuse the subsequent fulfillment as long the Buyer does not fulfill his obligation to pay to an extent that correlates with the part of the defect-free delivery.

**7.2** If the subsequent fulfillment according to 7.1 is impossible or was a failure the Buyer shall be entitled either to reduce the purchase price or withdraw from the contract according to the law; this applies particularly in case of an undue delay or refusal of subsequent fulfillment, as well as in case of a second failure.

As far as there are hereafter (7.4) no other arrangements further claims on the part of the Buyer irrespective of legal basis (in particular claims regarding breaches of primary and secondary obligations, reimbursement of expenses excluding the reimbursement of expenses after § 439 II BGB, unlawful act as well as other tortious liability) shall be excluded; this applies particularly to claims for damages beyond the delivery item as well as for claims for compensation regarding lost profit; there are also captured claims that are not resulting from the defectiveness of the delivery item.

**7.3** The regulations mentioned above apply as well in the case of the delivery of another item or in the case of the delivery in lesser quantity.

**7.4** The disclaimer which is regulated in 7.2 shall not apply as far as an exclusion or a limitation of liability concerning damages of life, body and health has been arranged which base on a deliberate or negligent breach of duty on part of the legal representative or the assistant of the Vendor; it shall furthermore not apply as far as an exclusion or a limitation of liability for further damages has been arranged which base on a deliberate or grossly negligent breach of duty on the part of a legal representative or assistant of the Vendor.

As far as the Vendor culpably infringes an essential contractual obligation or a "cardinal obligation" the liability shall not be excluded, but shall be limited to the contract coherent foreseeable direct damages. Furthermore the liability is excluded according to 7.2.

The disclaimer shall also not apply in cases in which according to the regulations of the Product Liability Act in case of damages of the delivery item was guaranteed for personal injury or damage to property with privately used items.

The disclaimer shall furthermore not apply in the case of acceptance of a guarantee and in case of a promised feature if a just by this comprised deficiency initiates our liability.

The mentioned above applies also in the case of the reimbursement of expenses.

**7.5** Claims from the Vendor's regress shall stay untouched by this paragraph.

### 8. Liability for Secondary Obligations

If because of the Vendor's default the delivered item cannot be used in the contractual arranged mode due to an neglected or incorrect execution of suggestions, consultations and other contractual secondary obligations (especially service and maintenance instructions of the delivery item) or damages which are caused the regulations shall apply to the exclusion of further claims on part of the Buyer according to 5.

### 9. Limitation of Time

**9.1** The claims for subsequent fulfillment, compensation and substitution compensation shall prescribe one year after the delivery of the delivery item.

This shall not apply if the delivery item was used in the common mode for a construction and caused its defectiveness; In this case the limitation of time starts only after 5 years.

**9.2** The claim for reduction and the execution of a right of withdrawal shall be excluded as far as the claim for supplementary performance prescribes.

The Buyer shall be entitled to refuse the payment of purchase price in this case insofar, as he would be entitled to do so due to withdrawal or reduction; in the case of an exclusion from withdrawal and a subsequent refusal of payment the Vendor shall be entitled to withdraw from the contract.

### 10. Installation and Start of Operation

**10.1** The installation, assembly and start of operation of the delivered system may only be carried out by qualified persons in compliance with the guidelines of the Vendor and corresponding to the appropriate technical standards. In the case the installation and/or assembling is carried out by the Vendor these regulation apply as well, unless otherwise agreed in writing.

**10.2** The start of operation may only be done by a technician acknowledged by the Vendor and according to his directions. The technician shall be entitled to refuse the start of operation if proper operation conditions are not provided by the Buyer. Costs that may result from the delayed start of operation and that are caused for the Vendor have to be paid by the Buyer.

**10.3** Before assembly the Buyer shall be obliged to inform about the position of invisible supply pipes or similar items and has to give the necessary static information unrequested.

**10.4** Before assembly the necessary items have to be at the assembly area and the complete preliminary work has to be proceeded as far as the assembling can be carried out without interruption and according to the agreement.

**10.5** In case the installation, assembly or start of operation are delayed without the Vendor's fault the Buyer shall be obliged to pay in reasonable way for the waiting time and additionally for journeys of the Vendors' assembly personnel.

**10.6** If the Vendor requests the buy-off of the delivery after finishing the Buyer shall be obliged to do so within two weeks. In case this does not happen the buy-off will be announced executed. The buy-off is also declared as executed as soon as the delivery and service – if necessary after ending of an appointed test stage – has been put into operation.

### 11. Conditions of Repair

**11.1** The Buyer and/or customer shall be obliged to issue an obligatory declaration – namely a declaration of no objection – concerning the thorough cleaning of the parts or devices that are considered for repair and mending in order to exclude danger of decontamination for the producer or deliverer. The device/items or parts have to be sent to the deliverer free from toxic, corrosive, microbiological, explosive, radioactive or other harmful substances.

**11.2** In case there is made an estimate of the costs by order of the Buyer the costs that result at this can be charged to his account, regardless whether there is issued a repair order afterwards or not. Because the time to search the defect is considered as working time the

resulting expenditure that has to be documented will be at the Buyer's expense, if the order cannot be carried out because:

- a) The defect that is objected to while considering the technical regulations cannot be discovered,
- b) The order was withdrawn during the procedure.

**11.3** The period of warranty for the complete repair work and for the installation of material takes six months.

**11.4** The payment practice is regulated according 3 et seqq. Additionally, the following reservation of title has been stipulated:

- a) As far as the spare parts installed during repair or similar do not become essential components the producer reserves his ownership with these until his receivables according to the contract have been balanced.
- b) In case the of the Buyer's delayed payment or in case he does not fulfill his obligations regarding the reservation of title the Vendor shall be entitled to demand the object from the Buyer in order to dismantle the attached components. All costs that result from the dismantling will be on the Buyer's account.
- c) In case the repair is carried out at the Buyer's location the Vendor shall be entitled by the Buyer to take over the dismantling at his place. The Buyer will be charged with the labor costs and transport expenses.

**11.5** Place of jurisdiction for all disagreements from this contract - in case the Buyer is a merchandiser - is the registered office of the producer or deliverer. However, both parties shall as well be entitled to file a suit at the Buyer's principal office.

### 12. Mending and Service

**12.1** The charge rates apply to the performance of the Vendors' service personnel. All-inclusive service and performance abroad are not included at this and need a special arrangement.

**12.2** The ordering party shall be obliged to support the service personnel during the working procedure at his own expenses. He shall be obliged to protect persons and objects at the working area. The Buyer shall be obliged to perform technical assistance at his own expenses, especially:

- a) Providing with the necessary assistants. The assistants shall be obliged to follow the instructions of the service personnel; the Vendor shall not be liable for the technical assistance and for the assistants.
- b) Finishing of all necessary assembling and installation work.
- c) Providing with light, electricity, heating and water including the necessary connections.
- d) Providing with the necessary equipment and instruments.
- e) Providing with appropriate washing facilities as well as with lockable rooms to store the tools and the clothes of the service personnel.
- f) Transport of the engines to the place of assembly, protection of all parts and materials from harmful influences of all kind. The technical assistance of the ordering party includes also the guarantee of an immediate start of work after the arrival of the service personnel and furthermore a working process without delay until the ordering party has carried out the transfer.

**12.3** The normal working time takes from Monday to Friday 35 hours. The service personnel adapts as far as possible to the working time of the ordering party.

**12.4** This working time is charged as normal working time including an extra overtime premium from the seventh full hour.

**12.5** The hourly wage rates are as follows:

- a) Service technicians 74.00 € incl. VAT.
- b) Engineers, chemists and physicists - payment by arrangement
- c) Premium for overtime hours, Sundays and public holidays
  - 25 % for the first two overtime hours per day
  - 50 % for overtime hours more than the above mentioned
  - 100 % for overtime hours on Sundays
  - 150 % incl. VAT for overtime hours on public holidays

**12.6** The allowance in the case of absence from 8 to 24 hours amounts to 10.00 € and in case of business journeys of several days' duration daily 20.00 € incl. VAT.

**12.7** The expenses for overnight stays will be charged in the amount of the arrangement made in advance.

**12.8** The travel expenses of the service personnel, including the costs for public transport etc., are also charged. In the case of going by car 0.60 € including VAT will be charged. The Vendor shall be entitled to choose the means of transportation himself.

**12.9** The working time of the service personnel has to be attested by the Buyer, regardless whether in the context of either a specified performance or work that has to be paid by the Buyer. In case this does not happen the entries of the service personnel will become effective.

**12.10** The resulting costs have to be paid directly after invoice receipt, excluding all possible discounts. This regulation applies also to temporary invoices.

### 13. Industrial Property Right and Copyright

**13.1** Unless otherwise agreed the Vendor shall be obliged to forward the delivery solely within the country free of industrial property rights and copyrights of a third party -in the following named trademark rights. In case a third party raises a justifiable claim because of (the Vendors') breach of trademark rights concerning deliveries against the Buyer the Vendor shall be liable towards the buyer within the term appointed in 9.1.

(a) The Vendor shall be entitled to effectuate either the right of use for the particular delivery, modify them such kind that the trademark right will not be infringed, or replace at his own choice and expense. If not possible according to appropriate conditions the buyer shall have the right of withdrawal or reduction. The Buyer shall not be entitled to demand substitution for useless expenditures.

(b) The obligation of the Vendor to pay compensation acts is based upon 9.

(c) The above-mentioned obligations of the Vendor apply only if the Buyer informs the Vendor about claims of a third party immediately in writing; furthermore in case he does not accept a breach and whereas the Vendor is authorized to make an arrangement after receiving order. If the Buyer ceases the usage of the delivered good because of mitigation of damages or other essential reasons he shall be obliged to inform the third party immediately that there is no acceptance of an infringement of an industrial property right in connection with this action.

**13.2** Claims of the Buyer are excluded in the extend he represents the infringement of an industrial property right.

Claims of the Buyer are also excluded if the infringement of an industrial property right is caused either by his special specifications, by an unpredictable application, because of change of the delivery or by usage together with products not delivered by the Vendor.

**13.3** In case of an infringement of an industrial property right the regulations apply according to 7. et Seqq., correspondingly. If there are other defects of title the regulation applies accordingly 7. et seqq., correspondingly.

**13.4** Other claims of the Buyer than these regulated in 13.sqq. towards the Vendor and his auxiliary persons are excluded.

### 14. Place of Jurisdiction

**14.1** The place for the delivery shall be the principal place of business of the Vendor.

**14.2** The place of jurisdiction between the Vendor and the Buyer shall be Aschaffenburg. The Vendor shall also be entitled to institute an action at the principal place of business or at the place of a branch of the Buyer. The place of jurisdiction Aschaffenburg applies as well in case the Buyer has no place of jurisdiction in the country, has moved within the country or in case his residence is unknown at the time of the institution of an action.

**14.3** All legal relations between the Vendor and the Buyer are subject to the laws of the Federal Republic of Germany, with the exception of the UN Convention on Contracts for the International Sale of Goods (CISG).

**14.4** The rights of the Buyer deriving from this contract shall not be negotiable.

### 15. Personal Data

The Vendor shall be entitled to store the personal data of the Buyer via data processing.

### 16. Severability Clause

This contract shall be generally liable also in case of judicial ineffectiveness of certain details. That regulation does not become effective in case of an unreasonable hardship for the other party.

**Date: January 2008**