

## Terms and Conditions of Sale and Delivery of the Company Pfreundt GmbH

– Hereinafter referred to as Supplier –

(As of B 06-11)

- Applicable to:**
1. Any person, who on signing the contract is acting in the context of their commercial activities or self-employed work (Entrepreneur);
  2. Legal entities subject to public law or special assets governed by public law - Hereinafter referred to as Purchaser -;

### 1. General

- 1.1 These terms and conditions and any separate contractual agreements shall apply to all deliveries and services.
- 1.2 Unless a special agreement has been made - a contract shall be concluded upon the written order confirmation of the Supplier.
- 1.3 The offers made by the Supplier are always without obligation and subject to confirmation.
- 1.4 The Supplier shall reserve all proprietary rights and copyrights for samples, price quotations, drawings and similar information of a physical or non-physical kind – including in electronic form; they must not be made available to third parties.

### 2. Scope of deliveries and services

In the event that the business relates to deliveries or services that are subject to technical advances, the Supplier shall be entitled to deliver the relevant state-of-the-art model.

### 3. Prises and payment

- 3.1 Unless a separate agreement has been made, the prices shall be considered ex works, including loading at the plant, however excluding packaging, postage and unloading. The prices exclude value-added tax at the statutory rate.
- 3.2 The Purchaser shall be responsible for the calibration of the goods.
- 3.3 In the event that the Purchaser defaults in the payment of an installment if payment by installments has been agreed, all outstanding installments shall be due immediately. The Supplier may then – without prejudice to its rights resulting from the retention of title – rescind the contract with notice or claim compensation from the Purchaser.
- 3.4 As far as the Purchaser defaults on the acceptance of goods or refuses to accept the goods, the Purchaser shall be obliged to pay a lump sum for damages amounting to 15% of the contract value. The Purchaser is expressly permitted to provide evidence that damages or depreciation have not occurred at all or are much lower than the lump sum stipulated for damages.
- 3.5 Interest shall be accumulated for monetary debt during the default of payment. The interest rate for default in-interest is stipulated in the law. The Supplier is free to assert a higher amount of damages caused by the default.

### 4. Retention of title

- 4.1 The Supplier shall reserve the right to retain the title for the delivery item until all payments have been satisfied in full – including for possible additionally owed secondary services – from the delivery contract. In the event of a default in payment, the Supplier shall be entitled to take back the delivery item following a reminder and the Purchaser is obliged to hand over the same. This also applies to other conduct on part of the Purchaser that contravenes the agreement.
- 4.2 As a result of the retention of title, the Supplier may only demand the handover of the delivery item if it has rescinded the contract. In the event of attachments or other interventions on part of third parties, the Purchaser must inform the Supplier without delay.
- 4.3 In the event that insolvency proceedings are opened for the assets of the Purchaser, the Supplier shall be entitled to rescind the contract with immediate effect and to demand the immediate return of the delivery item.
- 4.4 The Purchaser is entitled to resell the delivery item in the course of its normal business activities. However, it shall here and now assign all receivables to the Supplier, which it shall be entitled to receive from the buyer or from third parties as a result of the resale. The Purchaser shall also be entitled to collect this receivable even after the receivables have been assigned. The right of the Supplier, to personally collect the receivable, shall not be affected in the process.
- 4.5 The authorisation for collection shall expire if
  - the Purchaser defaults on its payment obligations towards the Supplier or
  - the authorisation for collection has been revoked or
  - an application for the opening of insolvency proceedings has been made.
 In this case the Supplier can demand
  - that the Purchaser informs him of the assigned receivable and the debtor of the same,
  - provides all information necessary for the collection,
  - hands over the relevant documentation and
  - informs the debtor of the assignment as far as this has not already been done by the Supplier.
- 4.6 If the delivery item is resold in conjunction with other goods that are not owned by the Supplier, the claim of the Purchaser against the buyer shall be considered assigned to the amount of the purchase price agreed between the Supplier and Purchaser.
- 4.7 The Purchaser shall at all times only process or modify items under retention of title on behalf of the Supplier. If the item under retention of title is processed in conjunction with other items that are not owned by the Supplier, the Supplier shall acquire the co-ownership to the new item to the proportion of the value of the item under retention of title compared to the value of the other processed items at the time of processing.
- 4.8 If goods of the Supplier are combined with other movable items to form one composite item or if they are blended inseparably with another item and the other item is regarded as the main item, the Purchaser shall assign a proportionate co-ownership to the Supplier, insofar as the Purchaser owns the main item.
- 4.9 The Purchaser shall keep the item that is owned or co-owned in safe custody for the Supplier. For the remainder, the same rules applicable to the items under retention of title shall apply for the item that has been created as a result of processing, modification, combination or blending.

### 5. Delivery period

- 5.1 The delivery period is stipulated in the agreements between the parties to the contract. The Supplier's compliance with the same is subject to all commercial and technical queries having been clarified between the parties to the contract and the Purchaser having fulfilled all relevant obligations. If this is not the case, the delivery time shall be extended by a reasonable amount of time.
- 5.2 The delivery period shall commence once the Supplier has sent out the order confirmation. In the event of changes to the scope of delivery the originally agreed delivery period shall become invalid.
- 5.3 The delivery period is considered fulfilled to if the delivery item has left the plant of the Supplier prior to the expiry of the delivery date or the Supplier has sent out a notification of readiness for dispatch. If the dispatch and/or the acceptance of the delivery item are delayed for reasons that are attributable to the Purchaser, the Purchaser shall be liable for the costs resulting from the delay in acceptance, commencing one month from the date of notification of readiness for dispatch and/or readiness for acceptance.
- 5.4 If the default in delivery is a result of force majeure, labour conflicts or other events that are outside of the sphere of influence of the Supplier, the delivery period shall be extended by a reasonable amount of time. The Supplier shall inform the Purchaser of the beginning and end of such circumstances without delay.
- 5.5 The Purchaser can rescind the contract without notice if the Supplier is ultimately unable to provide the overall service prior to the transfer of risk. The Purchaser may additionally rescind the contract if part of the delivery of an order becomes impossible and it has a justified interest in rejecting the partial delivery. If this is not the case the Purchaser must pay the portion of the contract price due for the partial delivery. If the impossibility or the inability occurs during the default in acceptance or if the Purchaser is solely or primarily responsible for these circumstances it shall remain liable to perform its part of the contract. The right of the Supplier to claim compensation or to rescind the contract shall not be affected.
- 5.6 If the Supplier defaults on delivery and the Purchaser incurs damages as a result, it shall be entitled to demand a flat amount of compensation caused by the delay. For each week of the default the amount shall be 0.5% in total, not exceeding 5% of the value of the partial delivery or total delivery that cannot be used in time as a result of the default or cannot be utilised as stipulated in the contract. 5.7 If the Purchaser grants a reasonable time limit to the Supplier in default in order for the Supplier to provide the service and this time limit is not observed, the Purchaser shall be entitled to rescind the contract in the framework of the statutory regulations.

### 6. Assembly and installation

The separate terms and conditions of assembly on part of the Supplier shall apply to the assembly and installation of goods.

### 7. Transfer of risk

- 7.1 The risk shall be transferred to the Purchaser once the delivery item has left the plant; this also applies if
  - partial deliveries are made or
  - the Supplier has accepted other services, e.g. shipping costs or delivery and installation.
 As far as an acceptance must take place, this is relevant for the transfer of risk. It must be carried out immediately on the scheduled date of acceptance or alternatively after the Supplier has sent the notification of readiness for acceptance. The Purchaser must not refuse the acceptance in the event of an insignificant defect. If the dispatch and/or the acceptance is delayed or is not made as a result of circumstances, that are not attributable to the Supplier, the risk shall be transferred to the Purchaser on the date of notification of readiness for dispatch and/or acceptance. The Supplier shall be obliged to take out insurance at the cost of the Purchaser at the request of the Purchaser.
- 7.2 In the event that the goods are stored in its own plant, the Supplier shall charge 0.5% of the contract price per month for the stored delivery parts. The right of the Supplier to demand additional compensation shall remain unaffected. The Purchaser is entitled to provide evidence of a lower damage.
- 7.3 Partial deliveries made by the Supplier are admissible if they are reasonable for the Purchaser.
- 7.4 The Purchaser is obliged to examine the goods for defects immediately after delivery and if a defect is found, to report it to the Supplier in writing without delay.

### 8. Warranty and liability

- 8.1 All such parts that have been found to be defective as a result of a circumstance occurring prior to the transfer of risk must be repaired or newly delivered at the discretion of the Supplier. The establishment of such defects must be reported to the Supplier in writing without delay. Once they have been disassembled, replaced parts shall become the property of the Supplier.
- 8.2 The Purchaser must give the Supplier the time and opportunity that the Supplier considers necessary to make the repairs and replacement deliveries as agreed with the Supplier; otherwise the Supplier shall be released from its liability for the resulting consequences. In urgent cases only, where there is a risk to operational safety and/or to prevent disproportionately large damages and the Supplier must be informed of this immediately, the Purchaser shall be entitled to remove or have the defect removed by a third party and to claim compensation from the Supplier for the necessary expenses.
- 8.3 If the complaint is found to be valid, the Supplier shall bear the costs resulting from the improvement and/or replacement delivery to the proportion of the costs for the replacement item including the shipping costs and the reasonable costs for the disassembly and installation and additionally the costs for the possible provision of its technicians and support staff including travel expenses, as far as this does not represent a disproportionate burden for the Supplier.
- 8.4 The Purchaser has a right to rescind the contract in the framework of statutory regulations, if the Supplier - with consideration of the statutory exceptions - fails to comply with the granted grace period for the repair or replacement delivery as a result of a material defect. In the event of an insignificant defect the Purchaser shall merely have the right to reduce the contract price; for the remainder the right to a reduction of the contract price shall be excluded.
- 8.5 Liability shall not be accepted, particularly in the following cases: Unsuitable or improper use, faulty assembly and/or operation by the Purchaser or third parties, normal wear and tear, faulty or negligent handling, faulty servicing, use of unsuitable operating equipment, defective construction works, unsuitable subsoil, chemical, electrochemical or electrical influences, as far as the Supplier is not responsible for the same.
- 8.6 In the event that the Purchaser or a third party carry out repairs improperly, the Supplier shall not be liable for the resulting consequences. The same also applies for alterations made to the delivery item without the prior consent of the Supplier.
- 8.7 The Supplier shall reserve the right to assert claims for compensation if the Purchaser fails to comply with its obligations to provide suitable appliances and systems. If the delivery item cannot be used as stipulated in the contract for reasons attributable to the Purchaser as a result of negligent or incorrect execution of proposals and consulting that took place prior to the contract conclusion or due to a violation of other secondary obligations - in particular relating to the operations and maintenance manual for the delivery item, the regulations in Sections 8.1 to 8.7 shall apply accordingly with the exclusion of further claims on part of the Purchaser. The Supplier shall only be liable for damages that did not occur to the actual item of delivery in the event of
  - intent,
  - gross negligence of the proprietor or its corporate bodies,
  - culpable damage to life, physical well-being and health,
  - defects concealed fraudulently by the Supplier,
  - confirmation of guarantees,
  - defects caused to the delivery item as far as liability extends to personal or material damages for privately used objects in accordance with the Product Liability Act (Produkthaftungsgesetz).
 In the event of a culpable violation of fundamental contractual obligations, the Supplier shall also be liable in the event of gross negligence by non-management employees and in the event of simple negligence; in the latter case this is restricted to reasonable, foreseeable damages typical for this type of contract. Further claims are excluded.

### 9. Statute of limitations

All claims of the Purchaser – submitted for whatever legal reasons – with the exception of claims from damage to life, physical well-being and health, shall be statute-barred after 12 months. In case of deliberate or fraudulent conduct and in case of claims in accordance with the provisions of the Product Liability Act, the statutory time limits shall apply.

These time limits shall also apply for delivery items, which consistent with their common application, are used in buildings and have caused the latter's defectiveness.

### 10. Software

- 10.1 The Supplier shall reserve the exclusive right to copy or distribute the software that it delivers or includes in the delivery. The Purchaser is only permitted to copy such software with the written consent of the Supplier. The software shall be licensed to the Purchaser for the delivery item designated for delivery. The use of the software on more than one system is prohibited.
- 10.2 All other rights to the software and its documentation, including copies, shall remain with the Supplier. Sublicences may not be granted.
- 10.3 The Supplier expressly points out that with state-of-the-art technology it is not possible to develop software that will function flawlessly under all conceivable circumstances. The subject of any warranty provided by the Supplier is therefore software that will generally function as described in the product description.
- 10.4 Subject to the express written agreements and extending beyond the product description the Supplier shall not provide a warranty that the function of the software is sufficient for the requirements of the customer or for a certain project.
- 10.5 As far as it is not expressly guaranteed in writing the Supplier shall not provide a warranty for the compatibility and functional performance of the software with hardware and software combinations chosen by the customer.

### 11. Applicable law, Place of jurisdiction

- 11.1 The law of the Federal Republic of Germany applicable to the mutual legal relationships between domestic parties shall apply exclusively to all legal relationships between the Supplier and the Purchaser.
- 11.2 In the event of a dispute arising from the contract, the place of jurisdiction is the competent court at the head office of the Supplier in 46354 Südlöhn. The Supplier is however, entitled to bring proceedings before the competent court at the head office of the Purchaser.