



Terms of Delivery and Payment

as of 06/2008

1. General Remarks

- 1.1 Sales and deliveries will only be performed subject to the following terms and conditions of the Supplier. Customer's general terms and conditions shall not form part of the Agreement, even if the Supplier does not explicitly contradict to them.
- 1.2 Apart from that, if not otherwise provided for in these Terms of Payment and Delivery, the ICC Incoterms of 2000 shall apply to and be binding upon the interpretation of the different sales clauses.

2. Quotation, Order Confirmation

- 2.1 Supplier's quotation shall be subject to changes regarding prices and availability of goods and therefore shall not be binding.
- 2.2 A contract shall be concluded upon the Supplier's written acceptance of the Customer's quotation, at the latest however upon delivery of the goods. Any amendment, changes or other collateral agreements, whether made by telephone or orally, must be confirmed in writing in order to become effective.
- 2.3 The Customer shall be responsible for the correctness of all documents, drawings, samples, gauges and suchlike made available by the Customer.

3. Prices and Terms of Payment

- 3.1 The prices shall be ex works excluding VAT, shipping and handling charges (freight, packaging, insurance, charges for express deliveries) and customs. Packaging shall be invoiced at cost price. The Customer may return the packaging to the Supplier. Any costs incurring through such return shall be born to the Customer.
- 3.2 Invoices are due upon receipt. Unless otherwise agreed upon, payment shall be made within 30 days as of the invoice date. Payments for wamework orders shall be made within 10 days net.
- 3.3 Payments are credited only to the extent to which the Supplier can freely dispose of them at a bank. Checks and bills of exchange shall not considered payment until they have been honored by a bank. Bills of exchange will only be accepted upon the Supplier's consent. Payments to representatives without written authority to collect shall be inadmissible.
- 3.4 The Customer may withhold payments or offset claims only if the counter claim is uncontested or has been determined by a non-appelable judgement.
- 3.5 In case that there is a period of more than four (4) months between conclusion of the contract and the agreed delivery date, the Supplier may invoice the prices valid at the time of delivery or allocation of the goods, or demand a surcharge for the increased wage, material and overhead costs. The same applies if the delivery date is postponed due to reasons in the Customer's sphere of responsibility.

4. Delivery

- 4.1 Any period of delivery specified shall only be considered to be approximately. However, such delivery dates or delivery periods shall be binding if they have expressly been confirmed in writing as been obligatory. Delivery periods begin with the dispatch of the order confirmation, however not before adduction of any documents and clearances to be provided by the Customer as well as clarification of any details of order execution and any technical questions and/or receipt of an agreed commission. Delivery dates/periods have been met when the goods have left the plant on or

before the delivery date or – if collection of the goods by the Customer is agreed – upon the Customer's notification about readiness for shipment.

- 4.2 Partial deliveries shall be allowed within reasonable limits.
- 4.3 Unless otherwise agreed upon, the Customer assumes risk of loss or deterioration of the goods upon surrendering of the goods to the carrier. This also applies in case that shipment of the goods will be carried out by Supplier's employees.
- 4.4 In case of a delay of performance due to force majeure or similar serious unforeseeable incidents beyond Supplier's sphere of influence (including but not limited to interruptions of operation, legitimate labour disputes, official orders and unforeseeable difficulties in material procurement), the Supplier shall be entitled to postpone the performance by the duration of such hindrance plus an appropriate preparation time, or to withdraw from the contract with regard to the part that has not been performed yet.

5. Warranty and Liability

- 5.1 Unless explicitly otherwise agreed upon, the warranty period shall be twelve (12) months.
- 5.2 The Customer shall immediately examine any goods delivered. Obvious defects, shortfalls and incorrect deliveries have to be reported to the Supplier immediately in writing, however at the latest within ten (10) days after receipt. Hidden defects have to be reported to the Supplier in writing immediately after discovery.
- 5.3 In case of justified complaints, the Customer shall be entitled to claim for supplementary performance or reduction in price or withdraw from the Agreement subject to the statutory requirements. However, in case of a minor defect or deviation the Customer shall not be entitled to withdraw from the Agreement.
- 5.4 Regarding the design of the Supplier's standard tools, the Supplier's catalogue specifications shall apply. However, such specifications shall be subject to technical further development. Product changes and/or deviations due to such further development shall not entitle the Customer to complaints provided that they are not unfavorable and/or that they are reasonable for the Customer.
- 5.5 Claims for damages – of whatsoever kind – against the Supplier are excluded if the Supplier, its legal representatives or the Supplier's auxiliary persons have acted with slight negligence. This exclusion of liability shall not apply in case of a breach of any guaranty assumed by the Supplier or if essential contractual obligations have not been fulfilled in a way that threatens the fulfillment of contract use. However, in such cases, the Supplier's liability shall be limited to the scope of the guaranty, or should an essential contractual obligation have been violated, to claims for customary and foreseeable damages. Claims based on product liability laws shall remain unaffected.
- 5.6 The Customer has to ensure that, by making use of drawings, samples and similar things made available to the Supplier, rights of third parties will not be infringed. The Customer shall indemnify the Supplier for and hold the Supplier harmless from any third party claim or disadvantage arising from any such infringement.

6. Retention of Title

- 6.1 The Supplier retains title and ownership in the goods (hereinafter referred to as 'Conditional Goods') until all claims – for whatsoever legal reason – against the



Customer are satisfied.

- 6.2 Processing or transformation of the Conditional Goods shall always be carried out in the Supplier's favour as manufacturer, but without obligation to the Supplier. In case of a combination or commingling of the Conditional Goods with other materials, the Supplier shall retain title and ownership in the newly manufactured goods in the relationship of the invoiced value of the Conditional Goods to the other materials.
 - 6.3 The Customer shall be entitled to process and/or sell the Conditional Goods in its ordinary course of business, provided that the Customer is not behind schedule with any payments due. The Customer assigns its claims arising from the resale of the Conditional Goods or any other legal ground in relation to the Conditional Goods (including but not limited to insurance claims, claims in tort) in advance to the Supplier. The Supplier accepts such assignment. The Customer shall hereby be authorised to collect the claims assigned to the Supplier in the Customer's own name. At the Supplier's request, the Customer shall disclose such assignment to its customers and provide the Supplier with the necessary information and documents.
 - 6.4 Any pledge or transfer by ways of security shall be inadmissible. If third parties intend to get access to the Conditional Goods, the Customer shall advise such third parties of the Supplier's title and ownership and inform the Supplier immediately of such (intended) access.
 - 6.5 Should the value of all securities exceed the value of the Supplier's claims by more than 20 %, the Supplier will – at the Customer's request – release securities of its own choice.
7. *Place of Performance and Place of Jurisdiction*
- 7.1 Place of performance for all obligations arising from this Agreement shall be Crailsheim.
 - 7.2 Crailsheim shall be the exclusive place of jurisdiction for deliveries and payment including any action arising out of a bill of exchange or check, as well as for all other disputes arising between the parties.
8. *Applicable Law*
- 8.1 The laws of the Federal Republic of Germany shall exclusively apply with respect to the parties' legal relationship. The UN Convention on the International Sales of Goods (CISG) shall not apply.
9. *Partial Invalidity*
- 9.1 Should individual contractual provisions be or become legally invalid, the Agreement shall remain binding upon the contractual parties with regard to the other valid provisions.