

# GENERAL TERMS AND CONDITIONS OF TRADE

## § 1 Application of Terms

(1)  
Our deliveries and services are subject to the following Terms and Conditions of Trade. We do not accept opposing terms and conditions on the part of our customer or terms and conditions deviating from our own Terms and Conditions of Trade unless such agreement is given expressly and in writing.

(2)  
Our Terms and Conditions of Trade also apply if we carry out an order without reservation, while being aware of opposing or deviating terms and conditions on the part of the customer. We hereby expressly reject order confirmations given by the customer which refer to his deviating terms and conditions of purchase.

(3)  
Our Terms and Conditions of Trade also apply to all future business transaction with our customer.

## § 2 Offers and Conclusion of a Contract

(1)  
Unless agreed upon otherwise, we are bound to our orders for 14 days starting with the date of the offer. After that we can revoke them at any time even after their acceptance by the customer.

(2)  
The customer is bound to his order for 14 days. Our acceptance is given in writing, by telefax or by e-mail, unless we deliver or invoice immediately.

The same applies in the event of amendments, modifications and collateral agreements.

## § 3 Scope of Deliveries and Services

(1)  
The scope of deliveries and services is determined by the agreements between the parties. Information regarding the scope of deliveries and services do not constitute any warranty on our part to assume the risk of availability of sub-supplies. We reserve the right to claim that we ourselves were not supplied correctly or on time by our suppliers.

Any guarantee or any warranty as to the availability of the products or their components requires an express written agreement between the parties, in which the terms "guarantee" or "risk of availability" are expressly used.

(2)  
The details given in our order confirmation shall determine the quality of the products, which is owed by us.

Specifications contained in catalogues, brochures, circulars, advertisements, illustrations and price lists are not binding, unless they have been expressly become part of the contract.

Details mentioned in our order confirmations and drawings which relate to the quality of the product do not constitute any guarantees, particularly no guarantees as to the durability.

Even after conclusion of the contract we are entitled to deliver a comparable product instead of the product agreed upon, provided that this product has been improved compared to the stipulated product and complies with all functions stipulated by the contract. This applies particularly also to additional functions, which were not included in the delivery object originally agreed upon.

(3)  
In so far as we deliver only software, it is standard software, i.e. software, which is used unchanged respectively almost unchanged several times. The details given in the description and the documentation of this software shall determine the quality of this software. We carry out the installation of software only on the basis of a separate agreement. If no such agreement exists, the installation shall be carried out by the customer.

(4)  
The scope of deliveries and services does not include training of the customer's employees. A training course needs to be agreed upon between the parties expressly and in writing.

(5)  
We only assume responsibility for installation if expressly agreed between the parties in writing. Unless otherwise agreed upon, installation by us is limited to putting the delivery object up and putting it into operation as well as introducing the employees to the operation of the delivery object for no longer than 4 hours. These are obligations resulting from the sale of the product. An acceptance of performance under the law of contracts for work and services does not take place.

## § 4 Use of the Software

(1)  
In so far as the delivery objects include software or we deliver software subsequently, the customer is granted a non-exclusive license unlimited in time, the scope of which is defined as follows.

(2)  
The customer is entitled to reproduce the software delivered or contained in the product only as far as the respective reproduction is necessary in order to use the delivery objects. Necessary reproductions include the installation of the software, which is recorded on the original data carrier, on the bulk memory of the product as well as loading the software on the internal memory. Furthermore the customer may copy the software for backup purposes.

(3)  
Recompiling the software to other code forms as well as other types of reverse engineering including changes of the software must be approved by us in advance and in writing. Should we refuse to remedy a defect and should the above-mentioned proceedings be

necessary for the correction of the defect, our consent is not required. This provision does not affect the adjustment of macros.

(4)  
The customer is not entitled to sell or give away the software itself, without the delivery object, to third parties without our written consent.

## § 5 Cooperation of the Customer

(1)  
The customer is obliged to cooperate in every respect required for the performance of our contractual obligations. Unless agreed upon otherwise between the parties, particularly the following cooperation is required:

- As regards installation of hardware the customer is obliged to put at our disposal premises equipped with a periphery that meets all necessary technical requirements for the installation of the hardware;

- as regards the installation of software the customer has to provide us with the hardware, on which the software due is to be installed and to keep this hardware in a condition ensuring a 100 per cent working order.

(2)  
Should the customer not comply with his cooperation duties and should we thereby incur additional expenses, e.g. travelling expenses, expenses for hotel accommodation, or personnel costs, the customer is obliged to reimburse such additional expenses. Waiting periods caused by the customer's failure to perform his cooperation duties will be billed on the basis of our usual hourly rates.

## § 6 Prices

(1)  
Unless agreed upon otherwise, our prices are ex works, plus the turnover tax applicable in the Federal Republic of Germany at the respective time. Unless agreed upon otherwise, all other costs are to be born by the customer, for example costs for packagings, transport, insurance, customs etc.

(2)  
The prices mentioned in our offer are based on our calculations at the time when our offer is made. Should the prices for microscopes or other necessary large technical instruments increase by at least 10 per cent after the offer was made respectively the contract was concluded concerning a contract which provides for an obligation of one of the parties which lasts for more than 4 months, we are entitled to increase the stipulated prices by the proportional extra costs. The customer will be informed. This provision applies accordingly in the event that the prices for microscopes and other large technical equipment which make part of the delivery object, should drop by at least 10 per cent.

## § 7 Payment

(1)  
Payments shall become due on the agreed date for payment. If no date for payment has been fixed, payments will become due upon receipt of the invoice or an equivalent statement of account. Should the date of receipt of the invoice or the statement of account be uncertain, payments will become due upon receipt of our deliveries or services.

(2)  
If more than one invoice is outstanding, payments made by the customers will be used to settle the claim longest outstanding.

(3)  
Unless agreed upon otherwise, payments may not be effected by draft or cheque.

(4)  
If the customer does not meet his payment obligations, particularly if he stops payments, we are entitled to claim the entire outstanding debt at once, even if we have already accepted cheques or drafts. In this event we are also entitled to refuse to carry out the performance of our outstanding obligations, until the customer effects payment or provides sufficient collateral securities.

(5)  
The customer is not entitled to set off his claims against ours, or to a right of retention, unless his counter claims have been either acknowledged by us or finally established by a Court of Law.

## § 8 Terms of Delivery, Default and Non-Performance

(1)  
Terms and dates indicated by us are not binding, unless they have been expressly fixed in our order confirmation in writing. Delivery time is the date fixed in writing in the order confirmation. Should all documents, necessary approvals, cooperation etc. to be supplied by the customer not be produced at least one month before the date of delivery, said date of delivery shall be extended by on month, starting with the date on which all the above-mentioned documents, necessary approvals, cooperation etc. have been completed and received.

(2)  
The date of delivery shall be considered as having been met if the goods have left our factory within the agreed time of delivery, or, in the event of collection by the customer he has been informed of our readiness for shipment.

(3)  
If we can prove, that we have not been supplied on time by one of our suppliers despite careful selection of our suppliers and despite the conclusion of the necessary contracts under reasonable conditions, the term of delivery shall be extended by the delay which has been caused by our supplier's failure to supply us on time. Should the before-mentioned hindrance last for more than one month, the customer shall be entitled to cancel the contract with respect to the part not yet fulfilled. Claims for compensation are excluded in this event.

We shall only be entitled to avail ourselves of the above-mentioned circumstances if we inform the customer about them immediately, i.e. within 3 working days after we have obtained knowledge.

(4)  
In the event of delay in accepting performance, the customer has to indemnify us for the loss caused by this breach of contract, in particular for expenses incurred as a result of the storage of the goods. This does not apply if this breach of contract is not attributable to the customer. In this case the customer's obligation to reimburse costs is limited to the expenses incurred by us due to the storage of the goods. After fixing an adequate time limit for accepting delivery but without success, we are further entitled to dispose otherwise of the goods and to supply the customer within a reasonably extended term.

The customer is obliged to effect payments by the agreed date for payment even if he is in default of acceptance. In so far as we dispose otherwise of the goods, the customer is no longer obliged to pay interest on the overdue accounts as of the date of such an otherwise disposal. However, we are not obliged to dispose otherwise of the goods.

#### § 9 Passing of the Risk/Shipment

(1)  
If the delivery object is shipped to the customer upon his request, or if the handing over is done – as it normally is – ex works, the risk of accidental destruction or accidental deterioration of the merchandise passes to the customer together with the handing over to the person entrusted by us with the dispatch, but no later than when the merchandise leaves our works or warehouse; this risk passes irrespective of whether the dispatch took place from the place of performance or who bears the freight costs. If the merchandise is ready for shipment and the shipment or accepting delivery of the merchandise is delayed due to circumstances beyond our responsibility, the risk passes on to the customer upon his receiving our notice of readiness for shipment. We arrange for an insurance of the delivery objects only on the customer's express request.

(2)  
Unless otherwise determined by the customer, the mode of shipment is at our discretion. We are under no obligation to use the cheapest mode of shipment. The packaging will be invoked and not be taken back, unless stipulated otherwise by legal provisions, e.g. the "Verpackungsverordnung", or unless otherwise agreed between the customer and us in a particular case.

(3)  
Raw materials, operating supplies, samples, originals, and other objects provided by the customer will be stored in an appropriate manner. It is incumbent upon the customer to arrange for any theft, fire, water or other risk insurance; unless the customer entrusts us to effect a respective insurance the costs of which are to be born by the customer. The same applies accordingly if we store goods produced for the customer on his request.

#### § 10 Retention of Title

(1)  
Delivered goods shall remain our property until all outstanding debts resulting from the business relationship between us and the customer have been paid in full. The customer is entitled to resell the goods within his normal business.

(2)  
In the event of processing or combination of the delivered goods, the retention of title also applies to the new goods and we shall be considered as their manufacturer. If our merchandise is processed or connected with goods or equipment of third parties, we do not own, we will own the share of the joint property in the new object which is determined by the ratio of the invoice value between our merchandise and the other processed merchandise.

(3)  
The outstanding claims of the customer resulting from resale of the goods to a third party shall be considered to have already been assigned by the customer to us at his very moment in total or to the amount of our share of the joint property as security (cf. § 10 clause (2)); we hereby accept the assignment. The customer is entitled to collect these claims until we revoke this authorization or he stops payments. The customer is not entitled to assign these claims, not either in order to collect these debts by way of factoring unless the factor is obliged to transfer the collected amounts directly to us as long as we still have outstanding claims against the customer.

Upon our request the customer must give us the information necessary for collecting the assigned claims, including a copy of the contract with his customer, the invoice and a list of the payments received from his customer.

(4)  
The customer will advise us immediately of any compulsory execution measures levied by third parties against merchandise sold by us under retention of title, or against claims assigned to us in advance, and will forward to us the documents required for an intervention from our side.

(5)  
If the customer is in default with his payments twice within six months, or if the customer is insolvent or objective criteria indicate his insolvency, we shall be entitled to claim back the delivered goods and, in the case of resale of the goods, we shall be entitled to collect the assigned outstanding amounts directly from the customer's customer. Our request for return of the delivered goods to us and/or the collection of the assigned claims shall not be construed as a cancellation of the contract with our customer, unless we have made an express statement to this effect.

(6)  
At the request of the customer we are obliged to release the security to which we are entitled at our own discretion, should the value of such security exceed the claims to be secured by more than ten per cent.

(7)  
The customer holds the merchandise sold by us under retention of title for us. He must effect fire, theft and water insurance for it. The customer hereby assigns his claims for compensation against insurance companies and other persons or entities liable for compensation resulting from the kind of damages mentioned in sentence 2 to us to the amount of our respective claim. Should there be a prohibition of assignment, the customer guarantees, that the insurer expressly grants consent to the assignment.

#### § 11 Product Control and Product Warning Obligations

(1)  
In order to protect third parties against possible dangers which may emanate from our products, the customer is obliged to monitor the product continuously with regard to its safety (product control obligation). The customer will advise us of dangers emanating from the product immediately in writing as soon as such dangers become apparent (product warning obligation).

(2)  
If claims based on violation of the product control obligation and/or the product warning obligation should be asserted against us by third parties, such liability will be passed on to the customer, if our liability has been caused by a violation of the product control obligation and/or the product warning obligation attributable to the customer.

#### § 12 Notice of Defect

The customer's obligation to examine the goods and to make a complaint in respect of a defect immediately on receipt is determined by Art. 377 Commercial Code.

#### § 13 Liability for Defects/Limitation Period

(1)  
If the delivered goods and/or the installation and/or the documentation are defective or if certain conditions of the goods do not comply with a guarantee given by us, we have the choice of either repairing the defective goods or replacing them by goods free of defects.

(2)  
Should two efforts to remedy a defect fail, the customer shall be entitled to choose whether to cancel the contract or to reduce the purchase price.

If the defect has been caused by gross negligence or willful intent on our part, the part of our vicarious agents or persons employed by us in the performance of our obligations and/or if the defect leads to a breach of essential contractual obligations (cardinal obligations) attributable to us, and/or to attributable personal injury, injury to life or to health, or if we have given a guarantee for certain conditions of the goods, the customer may also claim damages.

Should our breach of cardinal obligations have been caused by slight negligence and result in financial damage or damage to the customer's property, the claim for damages is limited to typically foreseeable losses.

In these cases there shall be no liability for production stoppages or lost profit.

This limitation on liability applies accordingly to our vicarious agents and persons employed by us in the performance of our obligations.

This limitation on liability does not affect the application of the Product Liability Act.

(3)  
Should we choose to repair the defect, we shall bear the expenses incurred. This does not include costs resulting from the fact, that the customer has moved the delivered goods from the customer's headquarters or from the delivery location.

If our customer sends the delivery object to us, he shall use our original packaging.

If the repair of the defect consists of the exchange of plug-in parts, which can be exchanged without additional technical changes, we may perform our obligation to remedy the defect by sending the plug-in part to the customer combined with instructions for the exchange.

(4)  
The customer is not entitled to warranty claims

- with regard to defects which have been caused by unreasonable treatment or excess wear by himself or his own customers,
- in the event of operating errors or application errors,
- if the delivery object has been tampered with or altered by incorporating parts not originating from us, except where the defect has not been caused by such changes,
- where assembly or usage instructions, of which we have informed the customer, have not been observed by the customer or his own customers, except in cases where the defect has not been caused by such non-compliance,
- for the suitability of the merchandise for a particular purpose of use, unless this specific use is mentioned in the order confirmation or in written instructions enclosed with the goods, or the suitability for a particular purpose of use has been expressly confirmed by us.

If the defect has been caused by a circumstance, which does not oblige us to warranty, the customer will reimburse us for all expenses caused by his claim.

(5)  
The regular limitation period for claims based on defects of the delivered goods, which are usually not used for buildings, is 12 months from the delivery of the goods to the customer and, in cases of an installation due by us, from the performance of the installation.

In so far as we are liable for damages the shortening of the limitation period does not apply to claims for damages based on defects caused by gross negligence or willful intent, attributable breach of essential contractual obligations (cardinal obligations), as well as personal injury, injury to life or to health attributable to us.

If we have expressly given a guarantee as to a certain quality of the product, the limitation period for claims resulting from this guarantee is 2 years from delivery of the sales object, to which the guarantee relates. If we have given a guarantee as to the durability, the limitation period for claims resulting from this guarantee expires when the term, for which the guarantee as to the durability was given, ends. This limitation period also starts from the delivery of the goods, to which the guarantee relates.

If the duration of guarantee is less than one year, the limitation period is defined by § 13 clause 5 of these General Terms and Conditions of Trade.

(6)  
If the delivered goods are second-hand goods, any liability for defects is excluded. This limitation on liability does not apply to claims for damages based on gross negligence or willful intent, attributable breach of essential contractual obligations (cardinal obligation), as well as attributable personal injury, injury to life or to health, contravention to the Product Liability Act as well as in case of a guarantee given by us as to a certain quality of the product.

(7)  
Any possible application of the Product Liability Act remains unaffected.

#### **§ 14 Claims for Compensation Resulting from Breaches of Duties to Protect, Default and Non-Performance**

(1)  
Our liability for defects as to quality and defects of title are not affected by this section (§ 14). The provisions of §§ 13 and 15 of these General Terms and Conditions of Trade apply to this kind of liability.

(2)  
Claims for compensation resulting from other breaches of duties on our part, particularly duties to protect interests warranting protection and/or obligations arising out of quasi-contractual relationships are excluded unless they are based on gross negligence or willful intent, attributable breach of essential contractual obligations (cardinal obligations), or personal injury, injury to life or health caused by us, our vicarious agents or persons employed by us in the performance of our obligations.

If we are liable for breach of cardinal obligations based on slight negligence, the claim for compensation of financial damages and damage to property is limited to typically foreseeable losses.

In these cases there shall be no liability for production stoppages or lost profit.

(3)  
This limitation on liability provided for under § 14 clause 2 applies accordingly to claims in tort. The liability under the Product Liability Act remains unaffected.

(4)  
Claims for compensation resulting from delay in delivery or from failure to perform cannot be asserted against us unless they are based on willful intent or gross negligence on our part, on the part of our vicarious agents or persons employed by us in the performance of our obligations.

This limitation on liability does not apply in the event of breach of essential contractual obligations (cardinal obligations) attributable to us.

If we are liable for damages based on slight negligence (breach of cardinal obligations), the claim for damages is limited to typically foreseeable losses.

In these cases of slight negligence there shall be no liability for production stoppages or lost profit.

Any possible right to cancellation of the contract, which the customer may have in the event of delay in delivery or failure to perform remains unaffected by this limitation on liability.

(5)  
Claims for compensation resulting from other breaches of duties, default or non-performance under this section, which are no claims for defects as to quality and/or defects of title, are subject to a limitation period of one year as of the end of the year during which the claim arose and the customer obtained knowledge of the circumstances justifying the claim or his lack of such knowledge was due to gross negligence. The maximum time periods for limitation of actions provided for under § 199 Sec. 2 and 3 German Civil Code apply.

This restriction does not apply to claims for damages based on gross negligence or willful intent, breach of essential contractual obligations (cardinal obligations) attributable to us, as well as personal injury, injury to life or health, or contravention to the Product Liability Act caused by us, our vicarious agents or persons employed by us in the performance of our obligations.

#### **§ 15 Intellectual Property Rights**

(1)  
Claims for compensation resulting from the infringement of trademarks, patents, patent applications, utility models, registered designs or copyrights of third parties against us, our vicarious agents or persons employed by us in the performance of our obligations are excluded, unless they are based on gross negligence or willful intent of ourselves, our vicarious agents or persons employed by us in the performance of our obligations or we have guaranteed that the above-mentioned intellectual property rights will not be infringed.

This limitation on liability does not apply in cases of breach of essential contractual obligations (cardinal obligations) attributable to us, our vicarious agents or persons employed by us in the performance of our obligations.

If we, our vicarious agents or persons employed by us in the performance of our obligations are liable for damages based on slight negligence (breach of cardinal obligations), the claim for damages is limited to typically foreseeable losses.

In these cases of liability based on slight negligence there shall be no liability for production stoppages or lost profit.

This limitation on liability applies accordingly to our vicarious agents and persons employed by us in the performance of our obligations.

(2)  
The customer's right to cancel the contract due to the infringement of the above-mentioned intellectual property rights remains unaffected.

(3)  
Where claims based on the infringement of third party rights are asserted against us, the customer may prove this defect of title only by having a final judgement of a Court of Law entered against him. This does not affect the customer's right to make us a third party defendant in the infringement lawsuit.

#### **§ 16 Suspension of the Limitation Period Due to Negotiations**

(1)  
Negotiations concerning liability for defects or other claims for damages shall only be considered to exist, if the parties have stated in writing, that they are negotiating such claims. Should the reference to this requirement in writing constitute an abuse of legal rights, neither party may plead the observance of same.

#### **§ 17 Trade Secrets**

(1)  
Plans, drawings and technical particulars, which we hand over to the customer, remain our property. The handing over of the documents mentioned does not create any rights of the customer in these documents, particularly no license. The customer may not use these documents, particularly he may not copy them, reproduce them or hand them over, make them accessible to or disclose them to third parties without our written consent. This applies even if the documents are not marked as confidential information.

(2)  
The customer ensures, that his employees, consultants, shareholders and others, who will become privy to these trade secrets, will be obliged in writing to safeguard our trade secrets to the extend described above.

(3)  
These obligations continue to apply after the termination of contractual relations.

#### **§ 18 Place of Performance, Applicable Law, Place of Jurisdiction, Partial Invalidity**

(1)  
Place of performance with regard to deliveries and payments is Munich.

(2)  
These General Terms and Conditions of Trade and the entire contractual relationship between us and the customer shall be subject to the law of the Federal Republic of Germany, excluding the UN-Convention on Contracts for the International Sale of Goods (CISG).

(3)  
Exclusive place of jurisdiction for all disputes resulting directly or indirectly from the contractual relationship shall be Munich or, at our discretion, the place where the customer has his headquarters.

(4)  
Collateral agreements, reservations, changes or amendments must be made in writing.

(5)  
Should individual clauses of these General Terms and Conditions of Trade be or become invalid, the remaining parts shall remain valid.

Should other provisions agreed upon in connection with the cooperation with the customer be or become invalid, the validity of all remaining provisions or agreements shall remain unaffected. In this event the parties shall be obliged to construe or to amend the invalid clause, so that the economic purpose of the invalid clause will be best achieved in a legally valid manner.