

**General Conditions of Sale and Delivery (Germany/Other Countries)**

(based on the conditions recommended by the German Engineering Federation (VDMA))

Position at October 2007

To be used with:

1. a person who is carrying on a trade or business, or is self-employed at the time of conclusion of the contract (entrepreneur);
2. a legal person under public law or a special public asset.

**I. General Information**

1. The supplier's General Conditions of Sale and Delivery shall apply exclusively; the supplier shall not accept any General Terms and Conditions of the purchaser which conflict with or deviate from the supplier's General Conditions of Sale and Delivery unless the supplier has expressly approved them in writing. The supplier's General Conditions of Sale and Delivery shall also apply if he effects delivery without reservation in the knowledge of General Terms and Conditions of the purchaser which conflict with or deviate from the supplier's General Conditions of Sale and Delivery.
2. All agreements made between the supplier and the purchaser for the purpose of performing this contract shall be stipulated in writing in this contract.
3. The supplier's General Conditions of Sale and Delivery shall also apply to all future business transactions with the purchaser.

**II. Quotation**

The documents pertaining to the quotation, for example illustrations, drawings, weights and measures, shall only be regarded as approximate unless they are expressly designated as binding. The supplier shall reserve ownership rights and copyright to cost estimates, drawings and other documents. These cost estimates, etc. may not be passed on to third parties.

**III. Scope of Delivery**

1. The contents of the contract and the scope of delivery shall be governed by the supplier's written order confirmation.
2. No oral incidental agreements have been concluded, neither shall any such agreements apply.
3. Incidental agreements and amendments to the contract shall require written confirmation by the supplier.

#### **IV Prices and Payment**

1. Unless otherwise stipulated in the order confirmation, the supplier's prices in EURO shall apply ex works (Incoterms 2000 EXW), including loading at the factory, but excluding packing, freight, transport, insurance, customs duties and the currently valid rate of value-added tax. Partial invoices shall be permitted in the case of partial deliveries. In the case of services within the EU, the purchaser shall provide his VAT registration number in good time before the invoice is issued.
2. The supplier shall reserve the right to raise his prices accordingly after a period of 4 months from the date of conclusion of the contract if cost increases occur after signing of the contract, such increases resulting in particular from the conclusion of collective agreements or higher material costs. On request, the supplier shall provide the purchaser with documentary evidence of these cost increases.
3. Unless otherwise shown in the order confirmation, the purchase price shall be paid without any deductions into the supplier's account as follows: 30% advance payment after receipt of the order confirmation, 50% at the time of notification of readiness for dispatch/readiness for acceptance of the main components and 20% 14 days after dispatch.
4. Installation work, commissioning, repairs, training courses and other services shall be invoiced according to the normal rates.
5. Unless different payment targets have been agreed, default shall occur after the purchaser has been sent a reminder or 14 days after the invoice has been issued. Default interest amounting to 8% above the base rate shall be charged. The enforcement of a claim for any further damage shall not be excluded hereby.
6. A right of retention may only be based on claims by the purchaser relating to the same legal relationship if these claims were recognized by the supplier or were final and absolute.
7. Offsetting shall only be permitted with claims which have been recognized by the supplier or are final and absolute.

#### **V. Delivery Period**

1. The delivery period shall commence on the date when the order confirmation is sent, but not before the provision of the documents, approvals or releases to be obtained by the purchaser, or before receipt of an agreed advance payment.
2. The delivery period shall be deemed to have been observed if the delivery item left the factory before the end of the delivery period or readiness for dispatch was notified and dispatch - if it was the responsibility of the supplier - was effected immediately. If acceptance at the supplier's factory has been agreed, the delivery period shall be deemed to have been observed at the time of notification of readiness for dispatch/readiness for acceptance.
3. The delivery period shall be extended accordingly on account of actions involving industrial disputes, especially strikes and lockouts, and in the event of substantial unforeseen impediments which are beyond the power of the supplier, provided it is proven that these impediments have considerable impact on the completion or supply of the delivery item. This provision shall also apply if such circumstances arise at subcontractors.
4. Similarly, industrial disputes, especially strikes and lockouts, and the occurrence of substantial unforeseen impediments which are beyond the power of the supplier - provided it is proven that such impediments have considerable impact on the completion or supply of the delivery item - shall not be the responsibility of the supplier if they occur during already existing default. § 287 Section 2 of the German Civil Code (BGB) shall be waived. The supplier shall immediately notify the purchaser about the beginning and end of such impediments in important cases.
5. If the purchaser suffers damage as a result of the exceeding of a delivery period for which the supplier is responsible, the purchaser may – to the exclusion of any other claims – demand compensation for default. For every full week of the delay this compensation shall

amount to 0.5%, but at most 5% of the value of that part of the complete consignment which cannot be used on time or according to the contract on account of the delay. This liability restriction shall not apply in the case of intent or gross negligence on the part of the organs or senior executives of the supplier or if compliance with the delivery period is actually, by way of exception, a so-called material contractual obligation. This liability restriction shall also not apply to damage due to culpable death, physical injury and/or impairment of health.

6. If dispatch of the goods is delayed at the request of the purchaser, he shall pay - commencing one month after notification of readiness for dispatch - the storage costs, but at least 0.5% of the invoice amount for every month of storage at the supplier's factory, unless the purchaser proves that no damage was actually incurred or that the amount of damage was much lower.
7. However, the supplier shall be entitled to dispose of the delivery item otherwise after granting a period of grace which expires unsuccessfully and to supply the delivery item to the purchaser with a suitably extended period.
8. The delivery period shall be delayed as long as the purchaser fails to fulfill all his contractual obligations. These obligations shall include, among others, the timely provision of sample material (e.g. test parts and material samples).

## **VI Passage of Risk and Reception of Goods**

1. Risk shall pass to the purchaser at the latest when the delivery items are on the supplier's ramp. If notification of readiness for dispatch/readiness for acceptance is sent to the purchaser, the date of this notification shall be regarded as the date on which risk is passed.
2. Passing of risk with provision of the delivery items on the supplier's ramp shall also be deemed to have been agreed if partial deliveries are made or the supplier has given an undertaking to perform additional services such as installation and commissioning.
3. If dispatch is delayed due to circumstances for which the purchaser is responsible, risk shall pass to the purchaser from the date of readiness for dispatch. However, the supplier shall be obliged, at the request and expense of the purchaser, to take out the insurances requested by the purchaser.
4. Delivery shall be taken by the purchaser for supplied goods which only contain minor defects, irrespective of his rights contained in Section VIII or any legal claims.
5. Partial deliveries shall be permitted.
6. Should notice of readiness for shipment/readiness for acceptance be sent to the Purchaser and should a shipment or acceptance of the deliverables fail to take place for reasons for which the Supplier is not responsible, the machine shall be deemed shipped or accepted 14 days after this date. Moreover, all outstanding billed amounts shall be due in accordance with the provisions agreed upon in the order confirmation as if the deliverables had been delivered or acceptance had taken place.

## **VII Reservation of Title**

1. The supplier shall reserve title to the delivery item until he has received all payments from the business relations with the purchaser. If the purchaser acts contrary to the terms of the contract, and especially fails to pay on time, the supplier shall be entitled to take back the delivery item. The purchaser shall then be obliged to return the delivery item. Taking back the delivery item or enforcement of the reservation of title shall not necessitate withdrawal from the contract by the supplier. These actions or attachment of the delivery item by the supplier shall not represent withdrawal from the contract, unless the supplier had expressly stated this in writing. The supplier shall be entitled to utilize the delivery item after it has been taken back. The proceeds therefrom shall be offset against the purchaser's liabilities – after deduction of reasonable utilization costs. An application to open insolvency proceedings against the purchaser's assets shall entitle the supplier to withdraw from the contract and demand the immediate return of the delivery item.

2. If reservations of title are not valid in a foreign country whose law is to be applied, the purchaser shall be obliged to cooperate in any measures, especially make any necessary statements, in order to create securities for the supplier that are equivalent to a reservation of title.
3. The purchaser shall be obliged to treat the delivery item carefully and, at the supplier's request, insure it adequately against damage for the duration of reservation of title. The purchaser shall at this time assign any claims against the insurance company to the supplier.
4. The purchaser may not pledge, sell or transfer ownership of the delivery item before passage of title. In the case of attachments or seizure or other utilization by third parties, the purchaser shall make reference to the supplier's ownership, inform the supplier immediately and hand over all data from this transaction to the supplier.
5. The purchaser shall be entitled to resell the delivery item in the ordinary course of business; however, he shall at this time assign to the supplier all claims amounting to the final invoice amount (including VAT), which accrue to him against his customers or third parties from resale, irrespective of whether the delivery item was resold without or after processing. The purchaser shall remain entitled to collect these claims even after assignment; the supplier's entitlement to collect the claim himself shall not be affected. However, the supplier shall give an undertaking not to collect the claim provided that the purchaser complies with his payment obligations from the collected proceeds, is not in arrears and, in particular, no application has been made to open insolvency proceedings or payments have been suspended. If the non-collection obligation ceases to apply, the supplier may request the purchaser to inform him about the assigned claims and their debtors, provide all the necessary information relating to collection, hand over the related documents and inform the debtors regarding assignment.

Processing or conversion of the delivery item by the purchaser shall always be performed for the supplier. If the delivery item is processed with other goods not belonging to the supplier, the supplier shall acquire joint ownership to the new product in the relation between the value of the delivery item and the other processed goods at the time of processing. The same provision shall apply to the product that results from processing as to the item supplied under reservation.

If the delivery item is inseparably mixed or combined with other goods not belonging to the supplier, the supplier shall acquire joint ownership to the new product in the relation between the value of the delivery item and the other mixed or combined products at the time of mixing or combination.

If mixing or combination takes place in such a way that the purchaser's item can be regarded as a main item, it shall be deemed agreed that the purchaser transfers proportionate joint ownership of the main item to the supplier. The purchaser shall keep sole ownership or joint ownership thus arising for the supplier.

At the request of the purchaser, the supplier shall be obliged to release the securities accruing to him if the attainable value of his securities exceeds the claims to be secured by more than 20%; the supplier shall select the securities to be released.

If the law covering the delivery item does not permit reservation of title, the supplier may exercise all rights which he can reserve to the delivery item. The purchaser shall be obliged to cooperate in measures which help the supplier to protect his right of ownership or, in lieu, his right of another security interest in the delivery item.

## **VIII Liability for Defects**

1. The purchaser shall be obliged to carefully check the delivery item for completeness and correctness as soon as it arrives at his premises. The time limit for making a complaint within the meaning of § 377 (1) and (2) of the German Commercial Code shall be 8 days; the decisive factor shall be the receipt of a written complaint (also permissible by fax) by the supplier.

2. If the purchaser is intending to enforce claims on account of defects in the delivery item, he shall hand over or send to the supplier the delivery item or components thereof forming the subject of complaint, unless this is impossible in technical terms or is unreasonable (e.g. with permanently installed large systems). In the case of a justified complaint made on time, the supplier shall rectify the defects through supplementary performance of his choice either by eliminating the defect or supplying a defect-free product. The supplier shall pay the costs of rectifying the defect, including the necessary transport costs, travelling expenses, labour costs and material costs. This provision shall also apply to the normal handover costs or dispatch costs according to sentence 1. If the costs of rectifying the defect increase due to the fact that the purchaser has taken the delivery item to a place other than the place of performance, the additional costs shall be borne by the purchaser. Replaced parts shall become the property of the supplier.
3. In accordance with legal regulations, the supplier shall be entitled to refuse supplementary performance. In the event of refusal of supplementary performance, its failure or its unreasonableness for the purchaser, the latter shall be entitled to withdraw from the contract or reduce the purchase price according to the provisions of the following subparagraph 4.
4. The purchaser shall only be entitled to withdraw from the contract – if withdrawal is not excluded by law – or reduce the purchase price after the unsuccessful expiry of a reasonable period of grace granted by him for supplementary performance, unless granting of this period of grace is dispensable according to legal regulations. If the purchaser withdraws from the contract, he shall be liable in the case of deterioration, loss and lack of benefit derived both for his own normal duty of care and for any negligible and intentional fault.
5. The provisions of Section IX shall apply to any compensation claims and claims for reimbursement of expenses by the purchaser.
6. The supplier's liability for defects shall not apply if the purchaser has not complied with the operating instruction or maintenance instructions, has made changes to the delivery item, has replaced parts or has used consumables, which do not correspond to the original specifications, has not maintained the delivery item properly or maintained it negligently, or unfavourable ambient conditions exist (especially chemical, electrochemical or electrical influences), unless the purchaser proves that the defect is not due to these conditions.  
  
In principle, no liability shall be assumed for defects to the delivery item or components thereof, which are due to normal wear and tear.
7. The purchaser shall grant the supplier the necessary time for supplementary performance. If the supplier is not given this opportunity, he shall not be liable for any resulting consequences. The purchaser may only arrange for third parties to effect any supplementary performance after the supplier has given his prior permission. If the purchaser has joint culpable responsibility for the defect, especially on account of the failure to comply with his duty to avert, minimize or mitigate loss, the supplier may demand compensation.
8. The limitation period for defect claims shall be one year or 3,000 operating hours (whichever occurs first), calculated from the start of the statutory limitation period. However, the statutory limitation period in § 438 (1) No. 2 and § 634 a (1) No. 2 of the German Civil Code (BGB) shall apply in the case of a structure and an item which has been used according to its normal utilization purpose for a structure and has caused its defectiveness. The statutory periods shall also apply in the case of intent or fraud and in the cases stipulated in § 478 and § 479 of the German Civil Code (BGB).

## **IX Liability of the Supplier, Exclusion of Compensation Claims**

Unless otherwise stipulated in these General Conditions of Sale and Delivery, the supplier shall only be liable under the following circumstances:

1. The supplier shall be liable in accordance with legal regulations if the purchaser has asserted damage claims or claims for reimbursement of expenses (hereinafter referred to as damage claims) which are based on intent or gross negligence – including intent or gross negligence

on the part of his representatives or agents, if the supplier has culpably infringed a material contractual obligation and in the cases of death, physical injury or impairment of health.

2. Compensation for the infringement of a material contractual obligation shall be limited to foreseeable, typically occurring damage.
3. The supplier's liability to pay damages shall be excluded in all other respects without consideration of the legal nature of the enforced claims. In particular, the supplier shall not therefore be liable for damage which did not occur to the delivery item itself.
4. The compelling provisions of the German Product Liability Act shall not be affected.
5. Claims by the purchaser for reimbursement of expenses shall be limited to his degree of interest in performance of the contract.
6. If the supplier's liability is excluded or limited, this shall also apply to the personal liability of his salaried employees, waged employees, co-workers, representatives and agents.
7. The purchaser is aware and hereby recognizes that any warranty or guarantee claims are excluded under German law if the purchaser changes any components of the products supplied in accordance with this contract. This exclusion of claims shall apply in particular, but not exclusively to the (operating) software of the supplied products. The supplier also informs the purchaser that any changes to the supplied products may be capable of infringing the supplier's immaterial goods rights; the purchaser hereby confirms that he is aware of this situation.

#### **X Purchaser's Right of Withdrawal**

1. The purchaser may withdraw from the contract if it is ultimately impossible for the supplier to effect full performance before passing of risk. This provision shall also apply if the supplier is unable to perform. If impossibility/inability involve material contractual obligations, Section IX shall apply. The purchaser may also withdraw from the contract if, in the case of an order containing identical items, partial delivery is impossible due to the number and the purchaser has a justified interest in rejecting a partial delivery; if this is not the case, the purchaser may reduce the consideration accordingly.
2. If performance has been delayed within the meaning of Section V of the Conditions of Sale and Delivery and the purchaser grants the defaulting supplier a reasonable period of grace with the express statement that he will refuse to accept performance at the end of this period, and if the period of grace is not observed, the purchaser shall also be entitled to withdraw from the contract.
3. If impossibility occurs during default in acceptance or due to the fault of the purchaser, he shall still be obliged to pay a consideration.
4. The purchaser shall also be entitled to withdraw from the contract if rework or substitute delivery for a defect for which the supplier is responsible in accordance with the Conditions of Sale and Delivery fails due to the supplier's actions within a reasonable period of grace that has been granted to him. The purchaser's right of withdrawal from the contract shall also apply in the case of impossibility or the supplier's continuing inability to carry out rework or provide a substitute delivery.

#### **XI Supplier's Right of Withdrawal**

1. The contract shall be adjusted accordingly in the event of unforeseen events within the meaning of Section V of the Conditions of Sale and Delivery, if they substantially change the economic importance or the content of the services or have a major effect on the supplier's business, and in the event of subsequently occurring impossibility of performance.

2. If it is not justifiable to adapt the contract for economic reasons, the supplier shall be entitled to withdraw totally or partially from the contract. The purchaser shall not be entitled to enforce claims for damages due to this withdrawal from the contract.
3. If the supplier wants to make use of the right of withdrawal, he shall immediately inform the purchaser after ascertaining the extent of the event, i.e. even when an extension of the delivery period was initially agreed with the purchaser.

## **XII Place of Performance, Place of Jurisdiction, Applicable Law, Other Terms and Conditions, Final Provisions**

1. The place of performance for delivery and payment shall be Mainhardt.
2. The sole place of jurisdiction, also for procedures involving bills of exchange, cheques and documents, shall be Schwäbisch Hall, irrespective of the supplier's right to have recourse to the court which is generally responsible for the head office of the purchaser.
3. The legal relations between the supplier and the purchaser shall be regulated solely according to material German law to the exclusion of the UN Convention on the International Sale of Goods (CISG) and the provisions of private international law.
4. The delivery items are designed, manufactured and installed according to the valid legal regulations in the Federal Republic of Germany. If the purchaser wants to furnish the delivery items according to regulations which differ from German regulations, he shall stipulate this at the time of ordering or immediately afterwards. The purchaser shall also send the regulations deviating from the German regulations in German or English. The supplier shall reserve the right to adjust the price and delivery dates if this becomes necessary on account of the purchaser's request.
5. The foreign purchaser shall be responsible for taking action which goes beyond the legal regulations applying in the Federal Republic of Germany and helps to protect the operators and other persons against any chemical, biochemical, electrical, electromechanical, electroacoustic and similar effects of the machine, product or cleaning liquid.
6. If individual clauses of these General Conditions of Sale and Delivery are or become invalid, the validity of the other clauses shall not be affected. The contracting parties shall be obliged to agree a new clause which comes as close as possible to the purpose of the invalid clause.
7. These General Conditions of Sale and Delivery shall only apply to deliveries. Our "General Repair and Assembly Conditions (Germany/Other Countries)" shall apply to repairs and assembly services.

The above conditions are the General Conditions of Sale and Delivery (Germany/Other Countries) of :

**Adunatec GmbH** Reinigungsanlagen, Bartensteinstrasse 22, D-74535 Mainhardt

- Referred to above as the "supplier"