



## I.

### **Scope:**

1. These General Conditions of Sale and Supply apply to legal dealings by us with all contracting parties who are not consumers within the meaning of § 13 German Civil Code (BGB). Our General Conditions of Sale and Supply also apply to all future transactions, as well as to every case in which contact is taken up with a customer for business purposes, such as, for example, the entry into contractual negotiations or in the preliminary stage before conclusion of a contract, even if these Conditions are not expressly agreed again or if no express reference is made to them again.
2. Our General Conditions of Sale and Supply apply exclusively. Conditions of the customer which diverge from, or which contradict, our Conditions of Sale and Supply are not recognized by us. Agreements reached beforehand and previous versions of our General Conditions of Sale and Supply are superceded by these Conditions of Sale and Supply.
3. The receipt of our services and supplies is deemed to constitute acknowledgement of the application of these General Conditions of Sale and Supply.

## II.

### **Conclusion of a contract:**

1. Unless otherwise agreed, our offers are binding until the end of the period of validity stated in the offer.
2. An order first becomes binding upon us, if it has been confirmed by us in writing or if we start to carry it out. This applies, above all, if the order from the customer is not based on a definite binding offer from our side.
3. If our offer or our confirmation of order is based on technical information from the customer (pictures, drawings, details of weights and measurements etc.), then our offer is only binding, if the order can be executed in accordance with the technical instructions of the customer. If, after conclusion of the contract, it transpires that the order cannot be carried out in accordance with the technical information provided by the customer, then we are entitled to withdraw from the contract, if and so far as the customer is not prepared to accept the alternative technical solution suggested by us and, as the case may be, to assume the additional costs actually incurred. In the event of such a withdrawal from the contract due to the blameworthy conduct of the customer, we are entitled to demand from the customer an amount of 15% of the net total volume of the order as



lump-sum damages. The supplier remains free to prove that the loss incurred by us is smaller. If the evidence presented is satisfactory, then the supplier is only obliged to compensate for the actual, smaller amount of loss.

4. If, before an order is placed, we arrange for sketches, drafts, samples or similar preliminary items of work to be produced or carried out at the wish of the customer, then, if the customer does not place an order based thereon within a reasonable period, we are entitled to charge our expenditure for such work to the customer at our cost price. Even after settlement of our expenditure, these drafts, samples etc. and all rights to use them remain the property of our company and may only be used by us.

### **III.**

#### **Extent of supply, Delivery:**

1. The extent of the supplies to be made by us is determined by our written offer or, as appropriate, by our confirmation of order. Collateral arrangements and alterations require our written confirmation.
2. If we supply machines containing software or in which software is installed, then, on payment of the price for delivery thereof, we grant the customer a simple right to use the software within the framework of the proper operation of the relevant device, such right not being transferable without the apparatus itself nor being sub-licensable by the customer.
3. If we supply software as a single product (in other words, not in such a form that the software is contained in a mechanical device or installed in it), then, on payment of the price for delivery thereof, we grant the customer a simple right to use the software in one device at a single workplace within the framework of the proper operation of the relevant device, such right not being sub-licensable by the customer, but being transferable to an end-customer only on condition that the existing software of the customer be simultaneously deleted and that the software supplied by us be installed on the device of the end-customer.
4. We are entitled to undertake acts of part performance in respect of all orders to such an extent as is fair and reasonable. Further, we are entitled to engage sub-contractors for the purpose of the performance of our contractual obligations.
5. Time-periods for supply and dates of delivery always represent best possible particulars, but are not generally legally binding. The start of the period for supply and compliance with delivery dates are subject to the following prerequisites: that the customer punctually and properly performs the acts of cooperation incumbent on the customer; that the customer makes available all necessary



documentation and that the customer makes all prepayments which may have been agreed. If the goods ordered are handed over by us to a transportation agent or if we notify the customer of our readiness to despatch the goods, then the date of delivery to the agent or, as appropriate, the date of the notice of readiness for despatch shall be deemed to be the date of supply.

6. Unless it is expressly stipulated as being binding, the documentation which is enclosed with our offers, such as, for example, drawings, details of weights and measurements, is only approximately authoritative.
7. If it is agreed that a supply or, as appropriate, a service is to be made on call, then the customer is obliged to accept the whole supply or service ordered within a reasonable time-period; however, such acceptance by the customer is to take place at the latest within three months after the on-call order has been agreed. When this time-period ends, then, in accordance with the Terms of Payment set out in Section VII, we are entitled to submit our account for the whole (on-call) order at the same time as the entire supply which was ordered is made available.
8. If the supply or, as appropriate, the service is delayed due to measures of force majeure, such as, for example, labour disputes, strikes, lock-outs, war, military conflict or because of other events in Germany or abroad for which we are not responsible, then the period for performance shall be extended appropriately by the duration of the period of the impediment and the period of its subsequent effects. This also applies, if these circumstances arise on the part of our sub-suppliers. To the extent that the event of force majeure results in performance becoming permanently impossible, we are entitled to withdraw from the contract. We also bear no responsibility for instances of force majeure, if they arise without blame on our part while a case of delay already exists. In important cases, we will immediately notify the start and end of such hindrances to our customers.
9. We do not come into delay due to delays in the provision of services if there is only slight negligence on our part or on the part of our assistants in performance.
10. We do not come into delay in the event of force majeure or in situations which arise without blame on our part or in extraordinary circumstances. In these cases, we are also entitled to withdraw from the contract, even if we were already in delay at the time. If, in these cases, on enquiry from the customer, we do not state within a reasonable period whether we will still perform the service which is owed, then the customer is entitled, on its part, to withdraw from the contract with regard to the part of the service which we still owe as contractor and which has not yet been performed by us.



11. If the customer is in delay with acceptance or if despatch is delayed at the wish of the customer, then, as from the time the notice of readiness for despatch is issued, the customer will be charged with the costs which arise due to storage by us or by a third party. We are entitled to assess these costs on a lump-sum basis at 0,5% of the invoice amount (incl. Value Added Tax) for every full week, but at a maximum of 10% of the invoice amount (incl. Value Added Tax). The customer remains at liberty to show that a smaller loss was incurred. After a reasonable period has been set and such period has fruitlessly expired, we are entitled to dispose of the item which was to be supplied elsewhere and subsequently to make a new supply to the customer within an appropriately-extended period.
12. If we are in delay, then the customer is entitled to claim its proven loss resulting from our delay. For cases of slight negligence, the amount of damages is limited to a maximum of 0,5 % of the value of the (partial-) supply involved per full week of the delay. However, in total, the amount of damages shall be limited to a maximum of 5 % of the value of the (partial-) supply involved.
13. If we are in delay, then the customer is entitled to set us a reasonable additional period to undertake performance. After fruitless expiry of that period, the customer is entitled to withdraw from the contract – unless, despite stipulation of the period, we did not have to reckon with such withdrawal – or, in the event of blameworthy conduct on our part, to claim damages in lieu of performance. In cases of slight negligence, the claim to damages is limited in accordance with the preceding paragraph.
14. If, in accordance with the contract which has been concluded, we are under an obligation to undertake an act of performance in advance, then we can decline to carry out the act of performance which is incumbent on us, if, after conclusion of the contract, it becomes apparent that our claim to the act of counter-performance is endangered by the other party's inability to perform. In particular, this is the case if the counter-performance to which we are entitled is endangered due to bad commercial circumstances or if other impediments to performance threaten, such as, for example, export- or import bans, armed conflicts, insolvency of suppliers or non-availability of necessary members of staff due to illness.
15. We can refuse to discharge our obligations of performance if, taking into consideration the content of the order and the principle of trust and good faith, the expense of doing so would be grossly disproportionate to the interest of the customer in performance. This is the case, in particular, if the act of performance or manufacture which has not been undertaken or which is wrongful has no adverse effect on, or only has an insignificantly adverse effect on, the customer, as is the case, for example, if there are cosmetic faults.
16. If our non-compliance with delivery periods is due to delays in connection with the grant of an export licence for which we are not responsible, then we do not thereby come into delay. If the



issue of an export licence is refused, we are entitled to withdraw from the contract. In that situation, any claims for damages on the part of the purchaser are excluded. The purchaser shall undertake all acts of cooperation which are necessary on its part in order to obtain an export licence and shall do so immediately and at its own cost.

#### **IV.**

### **Transition of Risk:**

Unless otherwise agreed, goods are supplied by us FCA Eningen, Incoterms 2010. The risk of destruction or of deterioration of the goods passes to the customer when the goods are handed over to the carrier of the customer in our factory; this is also the case, if part-deliveries are made. If delivery to the carrier is delayed for reasons within the area of responsibility of the customer, then risk already passes to the customer on issue by us of the notice of readiness for delivery.

#### **V.**

### **Changes in the Extent of Supplies**

Until delivery, we reserve to ourselves the right to make minor changes which are usual in the trade, in particular improvements to the goods, if the interests of the customer are not thereby adversely affected to an unacceptable extent.

#### **VI.**

### **Prices:**

1. Our prices are net prices and are to be understood as always being free carrier, FCA Eningen, Incoterms 2010, subject to the following modification: we will arrange appropriate transport insurance on reasonable terms and charge the cost thereof to the customer. When an invoice is issued, Value Added Tax will be added to the price at the statutory rate respectively applicable. Accordingly, the customer shall bear the following: costs of despatch, customs duties, transport insurance and other expenses associated with the supply, including the costs for the issue of officially-prescribed certificates of safety or conformity. If the customer desires a freight insurance, we will conclude such an insurance on the customer's behalf and at the customer's cost, if we are instructed to do so by the customer in writing.
2. If prices in respect of the relevant product or in respect of materials which are required in advance for the purposes of production are increased by our suppliers during the period between conclusion of the contract and the time of supply, then, in the event that there is a period of more



than four months between the time of conclusion of the contract and the date agreed for our supply or service, we are also entitled to increase prices in our relationship to the customer correspondingly.

3. If, by contract, we have assumed responsibility to carry out construction or assembly work, then, in addition to the agreed remuneration, the customer shall bear all reasonable ancillary costs, such as the costs of travel, transport and unloading.

## **VII.**

### **Terms of Payment:**

1. Our contractual claim becomes due for payment on receipt of the invoice. The customer comes into delay with payment on expiry of the date for payment agreed with the customer in the respective individual contract, even without notice of default. From that time onwards, the customer must compensate us for the loss which arises due to the delay; in particular, the statutory amounts of interest payable during delay.
2. If special orders are placed or if special solutions are requested, then we reserve to ourselves the right to make a graduated payment arrangement with the customer, including a reasonable payment on account in advance.
3. Unless expressly agreed, the customer is not entitled to make any deductions by way of discount.
4. Payment by bill of exchange, cheque or acceptance is only permitted if expressly agreed and, even then, is only deemed to be on account of payment. Discounting charges, expenses, tax on bills of exchange and collection fees are to be borne by the customer; they are due for payment immediately. In the case of payment by cheque, payment shall not be deemed to arise when the cheque is received, but first when it is cashed.
5. Set-off against our claims to remuneration is only possible with claims which are undisputed or which have been established with the force of law. The same applies with regard to the exercise of a right of retention. Moreover, the customer is only authorised to exercise a right of retention insofar as the right is based on the same contractual relationship.
6. The assignment of claims against us by the customer is not permitted.



## VIII.

### Reservation of Title:

1. We reserve to ourselves the right of ownership to the goods supplied by us for as long as there are any claims in existence arising from the order. If, at the time of supply, other claims still exist against the customer, apart from the claim which is owed to us in respect of the relevant order, then we reserve to ourselves the property in the goods delivered by us until all claims as specified above are settled (extended reservation of title).
2. If payments are made by the customer by cheque or bill of exchange, the claim which has arisen from the order and supply shall continue until such time as the sum owed finally stands at our disposal.
3. If the claims are incorporated in a current account, the extended reservation of title applies to the balance which is respectively outstanding.
4. If the goods are treated or processed by the customer while the reservation of title is still applicable, then the treating or processing shall be undertaken on our behalf in such a way that we acquire co-ownership of the new thing (produced), our share therein to correspond to the proportion which the purchase price of the thing supplied bears to the total sale value of the new thing (produced) at the time of processing. If the goods supplied are processed by the customer with other goods which do not belong to us, then we are entitled to co-ownership of the new thing produced, our share therein to correspond to the proportion which the purchase value of the goods which were used for the production of the new thing and which were subject to our reservation of title bears to the sale value of the new thing (produced) at the time of processing.
5. If the goods which are subject to reservation of title are inseparably connected, mixed or jumbled with other goods, then we acquire co-ownership of the whole quantity of goods in the amount of the proportionate value of our supply, §§ 947, 948 German Civil Code; BGB). If the customer obtains sole ownership due to connection, mixture or jumbling, then the customer already now transfers co-ownership to us in such proportion as the value of the goods which are subject to reservation of title bears to the value of the newly-manufactured goods at the time of connection, mixture or jumbling. We accept this transfer. In this case, the customer shall store the merchandise owned by us without charge.
6. The reservation of title is extended to all claims of the customer which are acquired by the customer through re-sale of the goods supplied or through re-sale of the goods which are newly manufactured. The claims are assigned to us in the amount of the invoice amount which is



outstanding. The customer assigns these prospective claims to us as security at the time the claims arise. We accept this assignment. The customer is only entitled to re-sell the goods which are subject to reservation of title or, as the case may be, to re-sell the newly-manufactured goods subject to the proviso that the customer's claim in respect of the goods re-sold or, as appropriate, in respect of work done passes to us in accordance with the foregoing terms. The customer is not entitled to undertake other dispositions.

7. The customer is not allowed to pledge the goods supplied nor to transfer ownership thereof as security. The customer must inform us without delay in the event that acts of distraint, seizures or other dispositions by third parties take place.
8. Our security rights do not prevent the customer from disposing of items which belong to us or of claims which have been assigned to us as security in the ordinary course of business. It no longer constitutes an ordinary course of business, if any of the following occur: if the customer falls into arrears with its payment obligations towards us for one month after the customer has come into delay; if protests regarding bills of exchange are made to the customer; if suspension of payments takes place or if an insolvency application is made. In such a case, the customer is obliged, at our request, to reveal the assignments to its own customers, to refrain from collection of the claims and to permit collection by us. If we so request, the customer is also obliged, on our first demand, to disclose to us the addresses of its own customers.
9. If an ordinary course of business no longer exists, we are entitled to take back the goods which are subject to reservation of title at the cost of the customer. If we take back goods in this way, if we assert the reservation of title or if we distraint upon the items supplied, then this does not constitute a rescission of the contract, insofar as this is permitted by law.
10. At the request of the customer, we are obliged to release those securities to which we are entitled in accordance with the foregoing provisions and as we may select to such an extent as the realisable value of such securities exceeds the claims to be secured.





## IX.

### **Liability for Defects and General Liability:**

1. Claims by the customer regarding defects in the work to be performed by us or regarding defects in supplies to be made by us, in particular claims to subsequent performance, reduction in price, withdrawal from the contract and damages, as well as other claims to damages on the part of the customer are governed by the statutory provisions, subject to the exceptions contained in this Section IX.
2. The following provisions shall apply with regard to claims by the customer for subsequent performance due to defects in the work to be performed by us or defects in supplies made by us:
  - a) If the item supplied is defective, we can initially choose whether to undertake subsequent performance by removal of the defect (repair) or by supply of a thing free of defects (replacement). Our right to refuse to undertake the kind of subsequent performance we have selected on grounds stipulated by statute remains unaffected.
  - b) We are entitled to make the subsequent performance owed by us dependent on payment by the customer of the remuneration due. However, the customer is entitled to withhold a reasonable part of the remuneration as is proportionate to the defect.
  - c) The customer must give us the necessary time and opportunity required in order for us to undertake the subsequent performance owed; in particular, the customer must hand over to us for examination purposes the goods which are the subject of complaint. If we choose replacement, in other words if we send an item free of defects to the customer, then the customer is obliged to return the defective thing to us in accordance with the statutory provisions.
  - d) The expenditure necessary for the purpose of examination and subsequent performance, in particular the costs of transport, journeys, work and materials, will be borne by us, if a defect actually exists. The expenditure for examination or subsequent performance resulting from the fact that, after delivery, the thing purchased has been brought to a place other than the personal residence or business location of the customer is to be borne by the customer. If a demand for removal of a defect from the customer turns out to be unjustified, we can claim reimbursement of the costs arising therefrom from the customer.
3. Goods received must be examined by the customer immediately. Transport damage must be documented; if damage to the goods is significant, acceptance must be refused. The claims of the customer regarding defects, in particular the claims to subsequent performance, withdrawal from the contract, reduction in price and damages require as a pre-condition that the customer has



complied with its statutory duties of examination and objection (§ 377 German Commercial Code (HGB)). If, on examination or later, a defect is discovered, then this must be notified to us in writing without delay. Notification shall be deemed to be made without delay, if it is made within five working days after discovery of the defect; despatch of the notification in time suffices to comply with the time-limit. Independently of this duty of examination and objection, the customer must notify obvious defects (including wrong delivery and delivery of a lesser quantity) in writing within five working days from delivery; in this case also, despatch of the notification in time suffices to comply with the time-limit. If the customer fails to examine the goods properly and/or fails to make notification of a defect, our liability in respect of the defect not notified to us is hereby excluded. This does not apply, if the defect was fraudulently concealed by us.

4. Claims to subsequent performance, reduction in price or withdrawal from the contract due to defects in the work to be performed by us or due to defects in items supplied become statute-barred one year from commencement of the limitation period as stipulated by statute. This does not apply, if the defect was fraudulently concealed or if a guarantee regarding the condition of the relevant item was assumed by us.
  
5. The customer can only claim damages:
  - a) in respect of loss arising from injury to life, body or health, if such loss is based on a breach of duty by us or a breach of duty by one of our statutory representatives or assistants in performance;
  
  - b) for losses based on the intentional or negligent breach of essential contractual duties (cardinal obligations) by us or by one of our statutory representatives, senior members of staff or assistants in performance. Essential contractual obligations (cardinal obligations) are obligations, the performance of which first makes the proper execution of the contract possible and upon compliance with which the customer regularly relies.
  
  - c) for losses based on an intentional or grossly negligent breach by us or by one of our statutory representatives, senior members of staff or assistants in performance of duties other than the abovementioned cardinal obligations.
  
  - d) for losses which fall within the protective scope of a guarantee (assurance) expressly given by us or within the protective scope of a guarantee of condition or durability.

In the event that a breach of an essential contractual duty is caused by simple negligence, our liability is limited in amount to the loss which is typically to be expected and which, if proper care was exercised, was foreseeable by us on conclusion of the contract. Excluded from this limitation are losses arising from injury to life, body or health.



Claims to damages by the customer in respect of a breach of one of our duties caused by simple negligence become statute-barred one year from commencement of the limitation period as stipulated by statute. Excluded herefrom are losses arising from injury to life, body or health.

Claims to damages against us based on mandatory, statutory liability, for example pursuant to the Product Liability Act, remain unaffected by the abovementioned arrangements and remain available to the extent and within the time-limits stipulated by statute.

6. Rights of the customer under Paragraphs 478 and 479 BGB for the event that a claim is made by a consumer against the customer or against a subsequent purchaser from the customer in a supply chain remain unaffected by the arrangements in this Section IX.
7. If third parties are instructed or involved for the purpose of facilitating or concluding the contract between the customer and ourselves, then the guarantee restrictions and limitations of liability stated above also apply in favour of the third parties.

## **X.**

### **Product liability:**

If, in the countries in which our products are to be re-sold to other persons by the customer, provisions regarding product liability or, as appropriate, product-safety are in force which diverge from, or are stricter than, equivalent provisions of German law, then the customer must point this out to us when the order is placed. In this case, we are entitled to withdraw from the contract within one month. If the customer omits to give the necessary clarification to us as above, then, within one month after we become aware of the relevant legal position, we can withdraw from the contract. In the latter situation, the customer is obliged to indemnify us against claims made by third parties which extend beyond our liability in a comparable case of product liability in Germany. The same also applies, if we adhere to the contract.

## **XI.**

### **Services:**

To the extent that, within the framework of an order, we accept an obligation to provide services (e.g. training), we owe provision of a service and not the achievement of a specific successful outcome.



## **XII.**

### **Acceptance:**

1. If, within the framework of the relevant order, we owe production of an item of work or if formal acceptance of our act of performance is otherwise agreed, then, after our company has provided an appropriate notice of completion, the customer is obliged to declare in writing that the contractual acts of performance due from us have been fulfilled.
2. If acceptance is delayed for a reason for which we are not to blame, then our act of performance shall be deemed accepted on the expiry of 7 calendar days from the notice of completion. On acceptance, our liability for defects which are apparent shall cease, except insofar as the customer has not reserved to itself in writing its right to assert a claim in respect of a specific defect. The remuneration remains due in full, regardless of such a reservation.
3. Part-acceptances shall be undertaken if we so request. To that extent, the foregoing conditions apply correspondingly.

## **XIII.**

### **Maintenance of secrecy:**

The customer undertakes as follows:

- that, during the period of the contract and for three years after it has ended, the customer will keep secret all information which has become accessible to the customer in connection with the contract and which is described as confidential or which, for other reasons, is recognisable as constituting a business- or company secret; and
- that, during the period of the contract and for three years after it has ended, the abovementioned information will not be recorded, passed on to third parties or used by the customer in any way, except insofar as express written consent thereto has been obtained beforehand or except insofar as any such conduct is necessary in order to achieve the purpose of the contract.

The following information is excepted herefrom:

- information which was already known to the customer before the contractual negotiations commenced or which is notified (to the customer) by third parties as not being confidential,



provided that those third parties are themselves not in breach of any obligations of confidentiality;

- information which has been developed by the customer independently of ourselves;
- information which is, or which will become, public knowledge without the blame or involvement of the customer;
- information which must be disclosed by the customer due to an order from a public authority or court. In the last mentioned case, the customer is obliged to inform us without delay before disclosure. Statutory duties of confidentiality which go beyond this remain unaffected.

## **XIV.**

### **Final Provisions:**

1. The place of performance and the legal venue for all disputes between the parties arising out of the contractual relationship is D-72800 Eningen, insofar as the customer is a merchant, a statutory corporation or a special fund governed by public law or if the customer has no general legal venue in the Federal Republic of Germany or has transferred its legal venue abroad. By way of exception hereto, we are also entitled to issue proceedings against the customer at the customer's general legal venue.
2. The customer is aware that data in connection with business transactions with us and also personal data (relating to the customer) will be electronically stored and that, consistently with business needs, such information must also be processed and transmitted to third parties. The customer consents to this storage and processing of data.
3. If a provision of these General Conditions of Sale and Supply should be or become ineffective or if, within the framework of other agreements, a provision hereof should be or become ineffective, then the effectiveness of all other provisions or agreements shall not be affected thereby.
4. The contractual and other legal relations between ourselves and our customers are governed by German law, to the exclusion of the law relating to the international sale of goods as enacted by the United Nations.