



## General Terms and Conditions of Delivery

- 1 General Provisions
  - 1.1 Only the following Terms and Conditions shall govern our deliveries. Terms and conditions opposing or deviating from our Terms and Conditions shall not apply unless we have approved the application thereof. The following conditions shall also apply if, notwithstanding our knowledge of terms and conditions of the customer opposing or deviating from our Terms and Conditions, we unconditionally perform delivery to the customer.
  - 1.2 Oral agreements before or at the time when the contract was concluded shall require written confirmation by us to be effective.
  - 1.3 If the customer fails to accept our quotation within two weeks of receipt thereof, we shall be entitled to cancel.
  - 1.4 Cost estimates are not binding and subject to charge except as otherwise expressly agreed.
  - 1.5 These Terms and Conditions shall also govern all future deliveries to the customer pending the entry into effect of our new terms and conditions of delivery.
- 2 Prices
  - 2.1 Invoices shall be calculated on the basis of the list prices in effect on the date of delivery.
  - 2.2 In the absence of any special agreement, prices shall be deemed to be FOB Shenzhen port (Incoterms © 2010) including packaging.
  - 2.3 We reserve the right to adjust our prices appropriately in the event of cost reductions or increases incurred after the contract has been entered into, in particular in case of wage cost changes, for instance due to collective bargaining agreements, or changes in the price of materials. Upon request we shall evidence such changes to the customer.
  - 2.4 Spare parts and products which have been repaired shall be shipped against a reasonable flat rate charge for shipping and packaging plus the charge for the service rendered by us, except where this is covered by liability for defects.
- 3 Delivery, Delivery Dates, Default
  - 3.1 The precondition for the commencement of and compliance with delivery dates agreed upon is that the collaboration duties shall have been performed by the customer, in particular the timely delivery of the entire materials, documentation, approvals, examinations and clearances to be provided by the customer and the compliance with payment terms agreed upon. If these preconditions are not duly met in good time, the delivery dates shall be reasonably extended; this shall not apply if the supplier is solely responsible for the delay.
  - 3.2 If non-compliance with the delivery date is due to force majeure or to other disturbances beyond our control e.g. war, terrorist attacks, import or export restrictions, including such disturbances affecting subcontractors, the delivery dates agreed upon shall be extended by the period of time of the disturbance. This also applies to industrial action affecting either us or our suppliers.
  - 3.3 If we are in default with our delivery, the customer shall declare upon our request and within a reasonable period of time whether it insists upon performance of delivery or asserts its other statutory rights.
  - 3.4 If a customer is in default of acceptance or if a customer culpably violates its collaboration duties, we have the right to demand compensation for the damage incurred by us in this respect including further additional expenditure in an amount of
  - 3.5 0.5 % of the price of the products for delivery but not exceeding, on aggregate, 5 % of the price of the products for delivery. The contracting parties reserve the right to prove higher or lower costs of additional expenditure. The right to raise further claims on account of default of acceptance shall remain unaffected hereby.
- 4 Transfer of Risk
  - 4.1 Delivery is effected FOB Shenzhen (Incoterms© 2010) except as expressly otherwise agreed.
  - 4.2 At the customer's request and cost we shall insure shipments against customary transport risks.
- 5 Complaints and Notification of Defects
  - 5.1 The customer must notify us in writing immediately, no later than 15 days after receipt of the goods, of any recognizable defects. Adhesive labels on the boxes, labels showing the contents and the control slips enclosed with the shipment shall be submitted to us together with the notification of the defect. Any other defects must be notified by the customer in writing immediately after discovery thereof.
  - 5.2 The date of receipt by us of notification of a defect shall determine whether or not notification is in good time.
  - 5.3 If the notification of a defect is unjustified we shall be entitled to demand compensation from the customer for any expenses we have incurred unless the customer can prove that it is not at fault regarding the unjustified notification of a defect.
  - 5.4 Claims on account of defects shall be excluded if the notification of the defect is not received in good time.
- 6 Taking Delivery
  - 6.1 The customer may not refuse to take delivery on account of minor defects.
- 7 Defects/Defects of Title
  - 7.1 Claims on account of defects shall become time-barred after a period of 12 months.
  - 7.2 The time bar period for defects commences upon delivery of the product (date of transfer of risk).
  - 7.3 If a defect arises during the time bar period the cause of which already existed on the date of transfer of risk, we may affect subsequent performance at our discretion either by remedying the defect or delivering a defect-free product.
  - 7.4 The time bar does not start to run again as a result of the subsequent performance.
  - 7.5 If subsequent performance should be abortive, the customer may – without prejudice to any claims to damages – rescind the contract or reduce the amount of payment in accordance with statutory provisions.
  - 7.6 Claims by the customer on account of expenditure required for the purpose of subsequent performance, in particular costs of transport, transportation, labor and materials, shall be governed by statutory provisions. They shall, however, be excluded insofar as such expenditure is increased due to the fact that the product delivered was subsequently taken to a place other than the branch operation of the customer unless such removal is in accordance with the designated use of the product.
  - 7.7 Claims for subsequent performance do not exist in case of merely inconsiderable deviation from the quality agreed upon or in case of only minor impairment to the use of the product. Further rights shall remain unaffected hereby.



- 7.8 The following are not deemed to be defects:
- A. ordinary wear and tear;
  - B. characteristics of the product and damage caused after the date of transfer of risk due to improper handling, storage or erection, non-compliance with installation or handling regulations or to excessive strain or use;
  - C. characteristics of the product or damage caused by force majeure, special external circumstances not foreseen under the terms of the contract or due to the use of the product beyond normal use or the use provided for under the terms of the contract.
- 7.9 Claims on account of defects do not exist if the product is modified by third parties or due to the installation of parts manufactured by third parties unless the defect has no causal connection with the modification. We assume no liability for the quality of the product based on the design or choice of material insofar as the customer stipulated the design or material.
- 7.10 Claims to recourse against us by the customer shall only exist insofar as the customer has not reached any agreements with its customer which are more far-reaching than statutory claims on account of defects, for instance accommodation agreements.
- 7.11 Claims on account of defects including claims to recourse by the customer shall be excluded insofar as the customer has had the defect remedied by a specialized workshop/service station not authorized by us.
- 7.12 Clauses 7.3, 7.6, 7.7 shall not apply insofar as our product was proved to be sold by the customer or customer of the customer to a consumer without being processed or installed into another product.
- 8 Industrial Property Rights and Copyright
- 8.1 We shall not be liable for claims arising from an infringement of third party intellectual or industrial property rights or copyright (hereinafter: industrial property right) if the industrial property right is or was owned by the customer or by an enterprise in which the customer holds, directly or indirectly, a majority of the shares or voting rights.
- 8.2 We shall not be liable for claims arising from an infringement of third party industrial property rights unless at least one industrial property right from the property right family has been published in the country of the place of the delivery.
- 8.3 The customer must notify us immediately of (alleged) infringements of industrial property rights and of risks of infringement in this respect which become known and, at our request – insofar as possible – allow us to conduct the litigation (including non-judicial proceedings).
- 9 Retention of Title
- 9.1 We retain title to the products delivered pending full performance of all claims to which we are entitled on the basis of the business relationship now and in future.
- 9.2 Insofar as maintenance and inspection work is required to the products to which we have retained title, the customer must conduct such work punctually at its own expense.
- 9.3 The customer is entitled to process our products or connect them with other products within the due course of the customer's business. By way of security for our claims set forth in clause 9.1 above we shall acquire joint ownership in the products created as a result of such processing or connection. The customer hereby transfers such joint ownership to us now already. As an ancillary contractual obligation, the customer shall store free of charge the goods to which we have retained title. The amount of our joint ownership share shall be determined by the ratio between the value of our product (calculated in accordance with the final invoice amount) and the value of the product created by processing or connection at the time of such processing or connection.
- 9.4 The customer shall be entitled to sell the products in the normal course of business against cash payment or subject to retention of title. The customer assigns to us now already all claims in full together with all ancillary rights to which the customer is entitled from the further sale of our product, irrespective of whether our product has been further processed or not. The assigned claims act as security for our claims set forth in clause 9.1 above. The customer is entitled to collect the claims assigned. We may revoke the rights of the customer as set forth in this clause 9.4 if the customer fails to duly perform its payment obligations with respect to us, is in default of payment, suspends its payments or if the customer files for insolvency proceedings or similar proceedings to be instituted with respect to its assets for debt settlement. We may also revoke the rights of the customer pursuant to this clause 9.4 if the customer's asset position should deteriorate materially or threaten to deteriorate or if the customer is insolvent or over indebted.
- 9.5 At our request the customer shall advise us immediately in writing of the parties to whom the products to which we have retained title or joint title have been sold and of the claims to which the customer is entitled on the basis of such sale and shall issue to us deeds officially authenticated at the customer's expense relating to the assignment of the claims.
- 9.6 The customer is not entitled to effect any other disposals of the products to which we have retained title or joint title or of the claims assigned to us. The customer must notify us immediately of any attachments of or other impairments to the rights of products or claims belonging to us either in whole or in part. The customer shall bear the entire costs which have to be expended in order to cancel the attachment of our retained property or security by third parties and to re-create the product insofar as it is impossible to retrieve it from the third parties.
- 9.7 If the value of the security existing for us exceeds the amount of our claims by a total of over 10 %, we shall release security to this extent at our discretion at the customer's request.
- 10 Cancellation
- 10.1 In the event of the customer's acting in breach of contract, in particular in case of default of payment, we have the right, notwithstanding our other contractual and statutory rights, to withdraw from the contract after expiry of a reasonable extended deadline.
- 10.2 We have the right to withdraw from the contract without setting an extended deadline if the customer suspends its payments or if the customer files for insolvency proceedings or similar proceedings to be instituted with respect to its assets for debt settlement.
- 10.3 We are also entitled to withdraw from the contract without setting an extended deadline if:
- A. the customer's asset position should deteriorate materially or threaten to deteriorate and, as a result, the performance of a payment obligation to us is jeopardized, or
  - B. if the customer is insolvent or over indebted.
- 10.4 After declaration of such withdrawal, the customer shall immediately grant us or our agents access to the products to which we have retained title and surrender them. After respective notification in good time we may also otherwise market the products to which we have retained title in order to satisfy our due claims against the customer.
- 10.5 Statutory rights and claims shall not be restricted by the provisions contained in this clause 10.



- 11 Export Control Clause
- 11.1 Deliveries and services (contractual performance) shall be subject to the proviso that there are no obstacles to performance due to national or international export control regulations, in particular embargos or other sanctions. The customer undertakes to provide all information and documentation which is required for export and shipment. Delays due to export examinations or approval procedures render deadlines and delivery dates inapplicable. If necessary approvals are not granted or if the delivery and service are not capable of being approved, the contract shall be considered not concluded with respect to the parts affected.
- 11.2 We have the right to terminate the contract without notice if such termination is necessary for us in order to comply with national or international legal provisions.
- 11.3 In the event of termination pursuant to clause 11.2, the customer is excluded from raising a claim for any damage or other rights on account of the termination.
- 11.4 When passing on the products delivered by us (hardware and/or software and/or technology and the respective documents, irrespective of the manner in which they are made available) and work and services performed by us (including technical support of all kinds) to third parties in Germany and abroad, the customer must comply with the respectively applicable provisions of national and international (re-) export control law.
- 12 Confidentiality
- 12.1 All of the business and technical information stemming from us (including characteristics which can be deduced from goods or software delivered and other knowledge or experience) shall be kept secret with respect to third parties if and as long as such information is not proven to be public knowledge or determined by us to be resold by the customer and it may only be made available to those persons within the customer's own operation who necessarily have to be included in the use thereof and who are also committed to secrecy; the information shall remain our exclusive property. Without our prior written consent such information may not be duplicated or commercially used. At our request all information stemming from us (including, if applicable, any copies or duplicates prepared) and goods made available on loan must be returned to us immediately in full or destroyed.
- 12.2 We reserve all rights to the information mentioned in clause 10.1 above (including copyright and the right to file applications for industrial property rights such as patents, utility models, semiconductor protection etc.).
- 13 Payment Terms
- 13.1 Except as otherwise agreed in writing, payment shall be effected within 30 days of the invoice date without any deductions whatsoever. We may also, however, make delivery conditional upon contemporaneous payment (for instance cash on delivery or bank direct debiting service) or on pre-payment.
- 13.2 We are entitled to offset payments made against the oldest claim due.
- 13.3 In case of delayed payment we are entitled to charge default interest at 8 percentage points above the base interest rate. The right to assert a claim on account of further damage is not excluded.
- 13.4 Payment by bill of exchange is only admissible following prior agreement with us. We only accept bills of exchange and checks on account of performance and they shall not be deemed to constitute payment until honored. The costs of redeeming a bill of exchange or check shall be borne by the customer.
- 13.5 If the customer is in arrears in payment we shall be entitled to demand immediate cash payment of all claims arising from the business relationship which are due and against which there is no defense. This right shall not be barred by a deferral of payment or by the acceptance of bills of exchange or check.
- 13.6 The customer shall only have the right to offset counterclaims insofar as the customer's counterclaims are undisputed, ruled with res judicata effect by a court of law or are ready for a decision after pending suit.
- 13.7 The customer shall only be entitled to withhold payments to the extent that its counterclaims are undisputed, ruled with res judicata effect by a court of law or are ready for a decision after pending suit.
- 14 Miscellaneous
- 14.1 If one of the provisions of these Terms and Conditions and the further contracts reached should be or become ineffective, this shall not affect the validity of the remainder of the Terms and Conditions. The contracting parties are obliged to replace the ineffective provision by a ruling approximating most closely the economic success intended by the ineffective provision.
- 14.2 The courts of Hong Kong shall have exclusive jurisdiction for any disputes arising directly or indirectly from the contractual relationship, provided that the Customer is a businessman, a legal entity under public law or a special fund under public law. We shall also have the right to take legal action at the Customer's domicile.