

Standard Terms and Conditions of Sale and Delivery of Ludwig Schwerdtel GmbH (1st of January 2007)

§ 1 Application of Standard Terms and Conditions of Sale and Delivery

- (1) Any and all bids to supply services and goods (hereinafter "Delivery" or "Deliveries") of Ludwig Schwerdtel GmbH (hereinafter "Supplier") to other persons (hereinafter "Customer") are made solely on the basis of these standard terms and conditions of sale and delivery ("Standard Terms and Conditions"). These Standard Terms and Conditions therefore also apply to any and all future business relationships, even if the parties have not expressly agreed to them again.
- (2) Unless otherwise agreed, a contract, which includes these Standard Terms and Conditions, will be formed when the order is confirmed in writing, but no later than upon the Customer's receipt of the Supplier's goods or services.
- (3) Any standard terms and conditions, which are used by the Customer and are within the meaning of § 305 (1) sentence 1 of the German Civil Code (BGB) but which deviate from, conflict with or supplement these Standard Terms and Conditions, will not become part of the contract, even if the Supplier is aware of such other standard terms and conditions, unless the application of such other terms and conditions has been expressly agreed in writing. Any ancillary agreements will be binding, only if the Supplier has confirmed them in writing.

§ 2 Scope of the Supplier's Duty to Perform

- (1) The Supplier's written order confirmation will govern the scope of the Supplier's duty to perform. Any previous depictions made by the Seller of the goods to be supplied (hereinafter "Goods") – perhaps in the form of a website or sales brochure – will not constitute a binding offer.
- (2) Protective devices will also be delivered to the extent required by law or an express agreement.
- (3) The provisions of the Association of German Electrical Engineering Technicians (*Verband Deutscher Elektrotechniker*), which are applicable on the date the contract is concluded, will apply to electrical materials, to the extent such provisions may come into question with respect to the security and safety of the Deliveries and services. Other provisions are permissible, provided that the same level of safety and security can be guaranteed in some other manner.
- (4) Any drawings, illustrations, measurements, weights or other performance data are binding only if the parties have expressly agreed in writing to such a binding effect.
- (5) The Supplier retains the proprietary interests and copyrights to all samples, cost estimates, drawings and similar information, whether tangible or intangible (even in electronic form). These items may not be disclosed to third parties and must be promptly returned to the Supplier upon request, specifically if no contract relating to a Delivery is concluded.

§ 3 Price and Payment

- (1) Unless otherwise agreed, the price owed by the Customer is set forth in the Supplier's written order confirmation. Any previous statements and information provided by the Supplier – such as in the form of a website or sales brochure presentation – are non-binding and subject to confirmation.
- (2) Unless otherwise agreed, prices are listed *ex works* and include any factory loading, but not include the costs of packaging and unloading. The applicable statutory value added tax (as amended from time to time) will be charged on the prices.
- (3) Payments shall be made in cash without any deductions free the Supplier's main office, as follows:
 - 35 % upon receipt of the order confirmation;
 - 60 % as soon as the Customer is notified that the Goods have been tendered for shipment (or are ready for formal acceptance if formal acceptance is agreed);
 - 5% of the amount following submission of the formal acceptance record but no later than 2 months after delivery of the Good is demanded.
 - If the Customer does not demand delivery of the Goods, then the balance of the amount will be owed 3 months after notice of the tender of shipment.
- (4) The Customer has a right to set off its counterclaims only to the extent that its counterclaims are undisputed or have been reduced to final judgment.

- (5) The Customer may exercise a right to withhold its contractual performance, only if its counterclaim is based on the same contractual relationship.

§ 4 Delivery Period

- (1) The delivery period will be based on the agreements reached between the contracting parties. The Supplier's adherence to such agreed delivery period is subject to the requirement that all business and technical issues between the contracting parties are resolved and that the Customer has discharged all its duties such as providing the necessary regulatory certificates or permits, approving the drawings, defining the interfaces to existing machinery or paying any advances stipulated in § 3 (3) of these Standard Terms and Conditions. If such requirements are not met, then the delivery period will be reasonably extended. No extension will be granted if the Supplier is responsible for the delay.
- (2) If the contracting parties agree to a delivery date (deadline), then such deadline will be deemed to have been met, if the Goods are tendered for shipment on or before such deadline and this status is communicated to the Customer. If a formal acceptance must be made, then for purposes of determining the deadline compliance, the date of formal acceptance will be dispositive – unless a formal acceptance may be legitimately refused – or, in the alternative, the date on which notice of the willingness to proceed with formal acceptance (tender of acceptance) will be dispositive.
- (3) If the shipment or formal acceptance of the Goods is delayed based on reasons for which the Customer is responsible, then the Customer will be charged the costs incurred as a result of the delay.
- (4) If the failure to perform within the delivery period is attributable to a *force majeure*, labor disputes or other events (even among the Supplier's own suppliers or their sub-contractors), which were not foreseeable to the Supplier and which are outside of the Supplier's sphere of influence and which the Supplier would have been unable to avoid upon deploying reasonable efforts, then the delivery period will be extended for the duration of the hindrance plus a reasonable (re-) start-up time. The Supplier agrees to notify the Customer as soon as possible concerning the beginning and the end of any such circumstances. If the Supplier is not responsible for the aforementioned circumstances, then it will also be entitled to rescind all or part of the contract.
- (5) The Customer may rescind the contract without setting a deadline for performance, if it would be ultimately impossible for the Supplier to discharge the entire performance before risk passes. The Customer may also rescind the contract if, during the order, the execution of a part of the Delivery becomes impossible and the Customer's only legitimate interest based on the terms and purpose of the contract would be to obtain full and complete performance, such that any partial performance would be futile in light of its purposes. If this condition is not met, then the Customer shall pay the contractual price which is attributable to the partial delivery. The same applies with respect to the Supplier's subjective inability to perform the contract. If the objective impossibility or subjective inability arises during a delay in formal acceptance or if the Customer is at least primarily responsible for such circumstances, then it will remain obligated to discharge its counter-performance duties. Otherwise, § 8 (2), (3) of these Standard Terms and Conditions will apply.
- (6) If, following the performance due date, the Customer sets a reasonable performance deadline for the Supplier – taking into account the statutory exceptions – and if such deadline is not met, then the Customer may rescind the contract in accordance with the statutory provisions.

Otherwise, any claims for a delay in delivery will be based exclusively on § 8 (2), (3) of these Standard Terms and Conditions.

§ 5 Transfer of Risk

- (1) The risk will pass to the Customer, when the Goods have left the factory, even if partial deliveries are made or the Supplier has assumed other performance obligations such as the shipping costs or a delivery to the Customer and onsite installation. If a formal acceptance must be made, then such formal acceptance will determine when risk passes. Formal acceptance must be promptly carried out on the acceptance date or, in the alternative, after the Supplier's notice about the tender of acceptance. The Customer may not refuse formal acceptance if a non-significant defect appears.
- (2) If, as a result of circumstances not attributable to the Supplier, the shipment or formal acceptance is delayed or omitted, then the risk shall pass to the Customer on the date that the tender of shipment or tender of acceptance is communicated. The Supplier agrees to execute, at the Customer's expense, any insurance policies which the latter requires.

- (3) If reasonable for the Customer, installment or partial deliveries may be made.

§ 6 Retention of Title

- (1) The Supplier retains title in the Goods until all claims (including all current account balance receivables), which the Supplier may enforce either now or in the future against the Customer based on whatever legal grounds, have been discharged. To the extent that the Goods in which title is retained (hereinafter the "Secured Goods") exceed the value of the claims by more than 20%, the Supplier will be obligated to release such title retention at the Customer's request.
- (2) The Customer is obligated to carefully handle the Goods during the period in which title is retained. If maintenance and inspection work is required, then the Customer must routinely perform such work at its own costs. The Customer must also insure the Secured Goods against fire and water damage.
- (3) In the event third parties execute upon the Secured Goods – specifically when debt enforcement measures are implemented – the Customer must call attention to the fact that the Secured Goods are the property of the Supplier and the Customer must promptly notify the Supplier thereof. The Customer must also promptly notify the Supplier of any damage to or destruction of the Secured Goods, any change in their possession, as well as any change in its own address.
- (4) In the event the Customer acts in breach of the contract (e.g., where it is late in any payment), the Supplier will be entitled to rescind the contract and to demand the return of the Secured Goods or, if necessary, to demand the assignment of any claims, which the Customer has against third parties to return the Secured Goods.
- (5) As long as the title retention exists, any processing or adaptation (§ 950 BGB) will always be made on behalf and by order of the Supplier, without thereby imposing any obligation on the Supplier, however. If the Supplier's (co-)ownership interest disappears as a result of combining the Secured Goods with other goods (§ 947 BGB), then it is hereby agreed that the Customer's (co-)ownership interest in a single combined property item will pass to the Supplier on a percentage value basis (based on invoice value). The Customer shall hold and protect the Supplier's (co-)ownership interest.
- (6) The Customer is authorized to process and sell the Secured Goods or the property, which is (co-)owned by the Supplier pursuant to § 7 (5) of these Standard Terms and Conditions, in the ordinary course of business, provided that it is not in performance default. Liens or other security interests may not be created in such goods and property. The Customer hereby agrees to assign to the Supplier any claims, which arise from a resale or are based on other legal grounds (insurance, tortious conduct, etc.) relating to the Secured Goods. Such assignment is made to secure the Supplier's claims and will be in the amount invoiced. The Supplier hereby accepts such assignment. The Supplier grants the Customer the revocable authority to collect, on its behalf and for its account, any claims assigned to the Supplier. The authority to collect the claims may be revoked only if the Customer fails to duly discharge its payment obligation and falls into payment arrears.

§ 7 Claims based on Defects in Quality

- (1) If the Goods or any portion thereof contain defects, then the Supplier may, in its discretion, demand subsequent performance either through the curing of the defect or the delivery of substitute goods. A Good is deemed defective, only if the cause of such defect arose from circumstances occurring prior to the transfer of risk. The Supplier will gain title to any replacement parts.
- (2) Promptly following receipt, the Customer must inspect the Goods for any qualitative or quantitative non-conformity and shall notify the Supplier in writing of any identified risks within one week. Otherwise, the enforcement of any rights based on the existence of defects is waived. Latent defects must be notified to the Supplier within one week following their discovery. A deadline will be deemed to have been met if the notice is dispatched in a timely manner. The Customer shall bear the full burden of proof for any and all claim requirements, specifically relating to the defects themselves, the timing of any identification of defects, and the timeliness of any notice of defect.
- (3) After conferring with the Supplier, the Customer must indicate the necessary time period for carrying out the cures or making the substitute deliveries. Otherwise, the Supplier will be released from any liability for the consequences resulting therefrom. In any case, the provisions concerning the delivery period and the provisions on warranty and liability set forth in these Standard Terms and Conditions will apply *mutatis mutandis*.

- (4) Only in urgent situations involving a threat to the safety of the factory or to avoid disproportionately large damages (in which case, the Supplier must be immediately counseled) will the Customer have the right to remedy the defect either itself or through a third party or to demand that the Supplier indemnify the requisite expenses.
- (5) In accordance with the statutory provisions, the Customer has a right to rescind the contract, if the Supplier – subject to the exceptions under the law – fails to duly cure or replace the Goods within the stipulated deadline period granted to it. If the defect is only minor, then the Customer will merely have the right to reduce the contract price. Otherwise the right to reduce the contract price remains waived. Any more extensive claims of the Customer (specifically those based on compensatory damages) are based on § 8 (2), (3) of these Terms and Conditions.
- (6) The Supplier provides the Customer with no express or implied guarantees within the meaning of the law. Manufacturer guarantees are not affected thereby.
- (7) If the Customer or a third party fails to cure the defect in an orderly manner, then the Supplier will not be liable for any consequences resulting from such failure. The same applies with respect to any changes to the Goods which are undertaken without the prior consent of the Supplier.

§ 8 Liability

- (1) If the Customer is unable to use the Goods in accordance with the contract because of the Supplier's fault resulting from the omitted or flawed implementation of recommendations or proposals made prior to or following the conclusion of the contract or because of a breach other ancillary contractual obligations – specifically instructions for servicing and maintaining the Goods – then the provisions under §§ 7, 8 (2), (3) of these Standard Terms and Conditions will apply *mutatis mutandis* and additional Customer claims are waived.
- (2) With respect to any damage not affecting the Goods themselves, the Supplier will be held liable – under whatever legal theories – only for
- intentional conduct;
 - gross negligence;
 - simple negligence, to the extent material contractual obligations are breached, but nevertheless limited to damages which are reasonably foreseeable based on the contract type;
 - the culpable injury to life, limb and health.
 - defects, which the Supplier has fraudulently concealed or the absence of which it has guaranteed;
 - defects in the Goods, to the extent that under the Product Liability Act, liability would extend to personal injury or to property damage to privately used items.
- (3) The Supplier's liability is also disclaimed, if the liability claim against the Supplier is based merely on the grossly negligent conduct of a non-managerial employee or other vicarious agents.
- (4) Any more extensive claims of the Customer are hereby disclaimed.

§ 9 Limitations Period

The Customer's claims – under whatever legal theories – will be time-barred in 12 months. With respect to compensatory damage claims under § 8 (2), (3) of these Standard Terms and Conditions, the applicable statute of limitations applies.

§ 10 Final Provisions

- (1) Any and all legal relations between the Supplier and the Customer will be governed exclusively by the applicable law of the Federal Republic of Germany. This includes, above all, the German Civil Code and German Commercial Code as well as the provisions of the UN Convention on Contracts for the International Sale of Goods (CISG).
- The international standardized terms of trade - INCOTERMS (2000 English language version) - will apply to supplement the contract. Unless the Supplier and the Customer otherwise agree in any given individual contract, the INCOTERMS term "EXW" applies.
- (2) Jurisdiction and venue shall lie with the competent courts at the Supplier's registered place of business. The Supplier is authorized, however, to file legal actions at the Customer's principal place of business or residence.
- (3) Should any provisions of this contract (including these Standard Terms and Conditions) be invalid, either in whole or in part, then the validity of the remaining provisions hereof will not be affected thereby. The partially or wholly invalid provision shall be replaced by the applicable statutory provision. To the extent that an applicable statutory provision does not exist, the economic outcome, which the parties sought to effect through the invalid provision, must be taken into account in construing the meaning of the contract.