

# **A & E Applikation und Entwicklung Produktionstechnik GmbH**

## **General Terms and Conditions of Supply**

### **I. General Provisions**

1. The following Terms and Conditions of Supply and Performance exclusively shall be the basis for all and any supplies and performances. Any deviating agreements shall require the written form.  
Any deviating purchase conditions of Buyer that have not been acknowledged in writing by Supplier shall be unbinding even if not expressly objected. Any oral agreements shall only be effective upon written confirmation of Supplier.
2. In the absence of a special agreement, a contract shall be effected by the written order confirmation of Supplier.
3. The documents belonging to the purchase offer such as images, drawings, weights and measurements shall only be approximately applicable unless expressly declared as being binding. Supplier shall retain the proprietary and copyrights in samples, estimates, drawings and other documents. They must not be made disclosed to third parties. Supplier undertakes to disclose information and documents declared as being confidential by Buyer only on approval of Buyer.
4. If Buyer is in delay with paying an previous invoice, we shall be entitled to withhold the supplies, without being obligated to compensate any loss thereby incurring.

### **II. Prices and Payment Conditions**

5. In the absence of a special agreement, the prices shall be valid ex works, including loading at the works, but excluding packing & packaging, freight, customs duty, additional import charges and unloading. Statutory Value Added Tax shall be added to the prices.
6. If after the submission of the purchase offer or after the order confirmation until the delivery the decisive cost factors change significantly, Supplier shall be entitled to adjust the prices accordingly. Buyer shall be entitled to rescind the contract within one week if the price is increased by more than 10 %.
7. In the absence of a special agreement, the payment shall be made without any deduction into the account of Supplier within 30 days after the invoice date.
8. If Buyer is in delay with the payment, Supplier shall be entitled to claim interest and damages according to the statutory provisions.
9. Buyer shall only be entitled to withhold payments or to set off counterclaims if Buyer's counterclaims are undisputed or legally enforceable.

### **III. Scope of Supply and Term of Delivery**

1. The written order confirmation of Supplier shall be decisive for the scope of the supply. In cases of a purchase offer of Supplier with binding period and acceptance, the purchase offer shall be decisive if no timely order confirmation is available. Any supplementary agreements and amendments shall require the written confirmation of Supplier.
2. The delivery period results from the agreements between the contractual parties. Its compliance by Supplier shall require that all and any commercial and technical issues have been clarified between the contractual parties and that Buyer has complied with all and any obligations incumbent on Buyer, such as submission of the required documents, permits and releases, as well as the payment of an advance payment agreed, if applicable. If this is not the case, the term of delivery shall be extended reasonably.
3. The delivery period shall be deemed complied with if by its expiry the article of sale has left Supplier's works or readiness for dispatch has been communicated.
4. The delivery period shall be reasonably extended if non-compliance with the delivery period is due to force majeure, industrial conflicts or other events that cannot be influenced by Supplier. This shall also be applicable if such events incur at subcontractors'.  
Likewise, Supplier shall not be responsible for the above-mentioned circumstances if such have incurred during a delay already existing. Supplier shall notify Buyer on the beginning and the end of such impediments as soon as possible.

5. If due to any delay incurred by fault of Supplier a loss has incurred for Buyer, Buyer shall be entitled to claim compensation for the delay. It shall amount to 0.5 % for each full week of delay, but maximum 5 % of the value of that part of the total supply that cannot be used in time or not at all in the way in which it was stipulated in the contract. If Buyer, by considering the statutory exceptional cases, allows Supplier who is in delay a reasonable period to perform and such period is not complied with, then Buyer shall be entitled to rescind the contract in the scope of the statutory provisions. Any losses beyond this shall only be compensated in the cases of Section VII.2.
6. If the dispatch or the acceptance respectively of the article of sale is delayed for reasons Buyer is responsible for, then Buyer shall be charged with the cost incurred by the delay, starting one month after the notification of readiness for dispatch or readiness for acceptance respectively. Supplier, however, upon fixing and fruitless expiry of a reasonable period, shall be entitled to dispose of the article of sale in any other way and to effect the delivery to Buyer after expiry of a reasonably extended period.  
The compliance with the supply and performance obligations by Supplier shall require the timely and due compliance with the contractual obligations by Buyer.

#### **IV. Transfer of Risk , Acceptance**

1. The risk shall pass to Buyer on dispatching the article of sale at the latest, in fact even if partial deliveries are made or Supplier has also taken charge of other performances, e.g. cost of dispatch or delivery and installation. To the extent to which acceptance has to be done, the acceptance shall be decisive for the transfer of risk. Acceptance shall be done without delay on the date of acceptance, in the alternative upon notification by Supplier on the readiness for acceptance. Buyer shall not be entitled to refuse acceptance if there is a defect that is not significant.  
On request and expense of Buyer, Supplier shall take out insurance cover against theft, breakage, transport, fire and water damage as well as any other insurable risks.
2. If the dispatch or the acceptance is delayed or omitted due to circumstances Supplier is not responsible for, the risk shall pass to Buyer on the date of the notification of readiness for dispatch or readiness for acceptance. Supplier, on request and expense of Buyer, undertakes to take out such insurance cover that Buyer requests.
3. All and any articles delivered shall be received by Buyer even if there are insignificant defects, without prejudicing the rights resulting from Section VI.
4. Partial deliveries shall be allowed if reasonable for Buyer.

#### **V. Retention of Title**

1. Supplier retains the title in the article of sale until having received all and any payments as required by the supply contract.
2. Supplier shall be entitled to take out insurance cover for the article of sale, with cost to be borne by Buyer, against theft, breakage, fire, water and other damage unless Buyer has proven that Buyer has taken out such insurance cover.
3. Buyer shall not dispose of, pledge or assign the article of sale. Buyer shall inform Supplier immediately on any levies of attachment or other acts of disposal by third parties.
4. With any behaviour of Buyer contrary to contract, notably payment delay, Supplier shall be entitled to withdraw the article of sale after warning, and Buyer shall be obligated to release it. Claiming the retention of title and levying attachment on the article of sale by Supplier shall not be deemed a rescission of the contract.  
The application to initiate insolvency proceedings at Buyer's shall entitle Supplier to rescind the contract and to claim immediate return of the article of sale.

#### **VI. Warranty**

For defects and defects of title in the article of sale, including the lack of expressly warranted features, Supplier shall pay as follows, by excluding any further claims, subject to Section VII:

##### Defects

1. All and any parts or performances resulting to be defective during the period of prescription caused by a circumstance that dates before the transfer of risk shall be reworked or replaced free

- of charge, at the option of Supplier. Supplier shall be notified in writing about such defects within 8 days from getting knowledge. Replaced parts shall become the property of Supplier.
2. No warranty shall be accepted for loss incurred due to the following reasons:  
Improper use, defective assembly or commissioning by Buyer or third parties, natural war & tear, faulty or negligent use, improper servicing, unsuitable operating resources, replacement materials, defective construction work, unsuitable building ground, chemical, electrical and chemical or electrical influences unless caused by Supplier.
  3. Buyer, on agreement with Supplier, shall grant Supplier the time and opportunity required to perform the rework or replacement that seem to be necessary, with Supplier otherwise being exempt from the liability for consequences resulting therefrom. Only in urgent cases of putting the operational safety at risk and to avoid unreasonably high damage, with Supplier to be notified immediately, shall Buyer be entitled to remove the defect or have the defect removed by third parties and claim compensation of the required expenditure from Supplier.
  4. From the cost incurring by the rework or replacement respectively, Supplier, if the claim results to be justified, shall bear the cost of the replacement part, including dispatch and reasonable cost of de-installation and installation and, the cost of possibly necessary assemblers and aides if it can be fairly claimed depending on the individual case. Any other cost to be borne by Buyer.
  5. Buyer, in the scope of the statutory provisions, shall be entitled to rescind the contract by considering the statutory exceptional cases if Supplier has omitted to act within a reasonable additional period fixed for the rework or replacement due to a defect. If the defect is insignificant, Buyer shall only be entitled to reduce the contractual price. In any other cases, the right to reduce the contractual price shall be excluded.
  6. Warranty of Supplier for consequences shall be excluded if Buyer or any third party does the rework improperly. The same shall be applicable to modifications of the article of sale made without the Supplier's prior approval.
  7. The warranty period, if not otherwise agreed, shall be the statutory period of 24 months.
  8. The warranty claims shall only be due to the direct buyer and cannot be assigned.

#### Defects of title

8. If the use of the article of sale causes violation of domestic industrial property rights or copyrights, Supplier, on Supplier's expense, shall procure for Buyer the right to use or to modify the article of sale, in a way that is reasonable for Buyer so that the violation of protective rights does not exist any longer.  
If this is not possible at economically reasonable conditions or within a suitable period, Buyer shall be entitled to rescind the contract. Under the mentioned prerequisites, Supplier shall also be entitled to rescind the contract.
9. The obligations of Supplier mentioned at Section VI.7 shall be final subject to Section VII.2 for the case of a violation of protective rights or copyrights.  
They only exist if
  - Buyer notifies Supplier immediately on any claimed violations of protective rights or copyrights;
  - Buyer supports Supplier in a reasonable scope at defending claims raised or enables Supplier to modify in accordance with Section VI. 7 respectively;
  - Any actions in defense including extrajudicial settlements are reserved to Supplier;
  - The defect of title is not based on Buyer's instructions;
  - The violation was not caused by Buyer modifying the article of sale without authority to do so or used it in a way contrary to contract.

#### **VII. Liability**

1. If the article of sale, by fault of Supplier, as a consequence of omitted or faulty accomplishment of proposals and consultations made before or after the conclusion of the contract or by violating other contractual additional agreements, cannot be used as provided in the contract, then the provisions of Sections VI and VII.2 shall be applicable accordingly, by excluding any other claims of Buyer.
2. Supplier, irrespective of which cause in law, shall only be liable for damage incurred to other than the article of sale at
  - Intent;

- Gross negligence by the owner / organs or executives;
  - Culpable injury to life, body and health;
  - Defects fraudulently concealed or warranted not to exist.
3. Any liability of A&E Produktionstechnik for losses including consequential losses resulting from the use of the product or the impossibility to use the product shall be excluded to the legally allowed extent.
- We shall notably not be liable for losses not incurred in the article of sale itself, such as lost profit, expenditure saved, third-party claims and other financial losses of Buyer.
- The entire liability of A&E Produktionstechnik in any case shall be limited to the value of the current purchase order maximum.
4. To the extent to which our liability is excluded or limited, this shall also be applicable for the personal liability of our employees, agents and vicarious agents.

### **VIII. Period of Prescription**

All and any claims of Buyer, irrespective of which cause in law, shall prescribe in 12 months.

The statutory periods shall be applicable at wilful or fraudulent behaviour and at claims based on the product liability law.

### **IX. Applicable Law, Place of Jurisdiction, Separability**

1. The law of the Federal Republic of Germany that is decisive for the legal relationship of domestic parties shall be exclusively applicable to any legal relationships between Supplier and Buyer.
2. The place of jurisdiction shall be the court competent for the legal domicile of Supplier.  
Supplier shall also be entitled to sue at the court competent for the legal domicile of Buyer.
3. Should any of the provisions in these General Terms and Conditions or any of the provisions in the scope of other agreements be or become invalid, the validity of all and any remaining provisions or agreements shall not be affected.