

# General Conditions

recommended by the Zentralverband Elektrotechnik- und Elektronikindustrie (ZVEI) e.V.

– January 2002 –

## I. GENERAL

1. The scope of deliveries and/or services (hereinafter referred to as „Supplies“) shall be determined by the written declarations of both Parties. General terms and conditions of the Purchaser shall apply only if and when expressly accepted by the supplier or the provider of services (hereinafter referred to as „Supplier“) in writing.
2. The Supplier herewith reserves any industrial property rights and/or copyrights pertaining to its cost estimates, drawings and other documents (hereinafter referred to as „Documents“). The Documents shall not be made accessible to third parties without the Supplier's prior consent and shall, upon request, be returned without undue delay to the Supplier if the contract is not awarded to the Supplier. Sentences 1 and 2 shall apply mutatis mutandis to documents of the Purchaser; these may, however, be made accessible to third parties to whom the Supplier may rightfully transfer Supplies.
3. The Purchaser shall have the non-exclusive right to use standard software, provided that it remains unchanged, is used within the agreed performance parameters, and on the agreed equipment. The Purchaser may make one back-up copy without express agreement.
4. Partial Supplies shall be allowed, unless they are unreasonable to accept for the Purchaser.

## II. PRICES AND TERMS OF PAYMENT

1. Prices shall be ex works and exclude packaging; value added tax shall be added at the then applicable rate.
2. If the Supplier is also responsible for assembly or erection and unless otherwise agreed, the Purchaser shall pay the agreed remuneration and any incidental costs required, e. g. travel costs, costs for the transport of tools and equipment, and personal luggage as well as allowances.
3. Payments shall be made free Supplier's paying office.
4. The Purchaser may set off only those claims that are undisputed or against which no legal recourse is possible.

## III. RETENTION OF TITLE

1. Items pertaining to the Supplies („Retained Goods“) shall remain the property of the Supplier until each and every claim the Supplier has against the Purchaser on account of the business connection has been fulfilled. If the combined value of the security interests of the Supplier exceeds the value of all secured claims by more than 20 %, the Supplier shall release a corresponding part of the security interest if so requested by the Purchaser.
2. For the duration of the retention of title, the Purchaser may not pledge the Retained Goods or use them as security, and resale shall be possible only for resellers in the ordinary course of their business and only on condition that the reseller receives payment from its customer or makes the transfer of property to the customer dependent upon the customer fulfilling its obligation to effect payment.
3. The Purchaser shall inform the Supplier forthwith of any seizure or other act of intervention by third parties.
4. Where the Purchaser fails to fulfil its duties, including failure to make payments due, the Supplier shall be entitled to cancel the contract and take back the Retained Goods in the case of continued failure following expiry of a reasonable time set by the Supplier; the statutory provisions that a time limit is not needed remain unaffected. The Purchaser shall be obliged to surrender the Retained Goods.

## IV. TIME FOR SUPPLIES; DELAY

1. Times set for Supplies can only be observed if all Documents to be supplied by the Purchaser, necessary permits and releases, especially concerning plans, are received in time and if agreed terms of payment and other obligations of the Purchaser are fulfilled. Unless these conditions are fulfilled in time, times set shall be extended appropriately; this shall not apply where the Supplier is responsible for the delay.
2. If non-observance of the times set is due to force majeure such as mobilization, war, rebellion or similar events, e. g. strike or lockout, such time shall be extended accordingly.
3. If the Supplier is responsible for the delay (hereinafter referred to as „Delay“) and the Purchaser demonstrably suffered a loss therefrom, the Purchaser

may claim a compensation as liquidated damages of 0.5 % for every completed week of Delay, but in no case more than a total of 5 % of the price of that part of the Supplies which because of the Delay could not be put to the intended use.

4. Purchaser's claims for damages due to delayed Supplies as well as claims for damages in lieu of performance exceeding the limits specified in No. 3 above shall be excluded in all cases of delayed Supplies even upon expiry of a time set to the Supplier to effect the Supplies. This shall not apply in cases of mandatory liability based on intent, gross negligence, or due to injury of life, body or health. Cancellation of the contract by the Purchaser based on statute shall be limited to cases where the Supplier is responsible for the delay. The above provisions do not imply a change in the burden of proof to the detriment of the Purchaser.
5. At the Supplier's request the Purchaser shall declare within a reasonable period of time whether the Purchaser cancels the contract due to the delayed Supplies or insists on the Supplies to be carried out.
6. If dispatch or shipment is delayed at the Purchaser's request by more than one month after notice of the readiness for dispatch was given, the Purchaser may be charged, for every month commenced, storage costs of 0.5 % of the price of the items of the Supplies, but in no case more than a total of 5 %. The parties to the contract may prove that higher or, as the case may be, lower storage costs have been incurred.

## V. TRANSFER OF RISK

1. Even where delivery has been agreed freight free, the risk shall pass to the Purchaser as follows:
  - a) if the Supplies do not include assembly or erection, at the time when the Supplies are shipped or picked up by the carrier. Upon request of the Purchaser, the Supplier shall insure the Supplies against the usual risks of transport at the expense of the Purchaser;
  - b) if the Supplies include assembly or erection, at the day of taking over in the own works or, if so agreed, after a fault-free trial run.
2. The risk shall pass to the Purchaser if dispatch, shipping, the start or performance of assembly or erection, the taking over in the own works or the trial run is delayed for reasons for which the Purchaser is responsible or if the Purchaser has otherwise failed to accept the Supplies.

## VI. ASSEMBLY AND ERECTION

Unless otherwise agreed in writing, assembly/erection shall be subject to the following provisions:

1. The Purchaser shall provide at its own expense and in good time:
  - a) all earth and construction work and other ancillary work outside the scope of the Supplier, including the necessary skilled and unskilled labour, construction materials and tools,
  - b) the equipment and materials necessary for assembly and commissioning such as scaffolds, lifting equipment and other devices as well as fuels and lubricants,
  - c) energy and water at the point of use including connections, heating and lighting,
  - d) suitable dry and lockable rooms of sufficient size adjacent to the site for the storage of machine parts, apparatus, materials, tools, etc. and adequate working and recreation rooms for the erection personnel, including sanitary facilities as are appropriate in the specific circumstances. Furthermore, the Purchaser shall take all measures it would take for the protection of its own possessions to protect the possessions of the Supplier and of the erection personnel at the site,
  - e) protective clothing and protective devices needed due to particular conditions prevailing on the specific site.
2. Before the erection work starts, the Purchaser shall make available of its own accord any information required concerning the location of concealed electric power, gas and water lines or of similar installations as well as the necessary structural data.
3. Prior to assembly or erection, the materials and equipment necessary for the work to start must be available on the site of assembly/erection and any preparatory work must have advanced to such a degree that assembly/erection can be started as agreed and carried out without interruption. Access roads and the assembly/erection site itself must be level and clear.
4. If assembly, erection or commissioning is delayed due to circumstances for which the Supplier is not responsible, the Purchaser shall bear the reason-

\* Translation of the original German text



# General Conditions

able costs incurred for idle times and any additional travelling of the Supplier or the erection personnel.

5. The Purchaser shall attest to the hours worked by the erection personnel towards the Supplier at weekly intervals and the Purchaser shall immediately confirm in writing if assembly, erection or commissioning has been completed.
6. If, after completion, the Supplier demands acceptance of the Supplies, the Purchaser shall comply therewith within a period of two weeks. In default thereof, acceptance is deemed to have taken place. Acceptance is also deemed to have been effected if the Supplies are put to use, after completion of an agreed test phase, if any.

## VII. RECEIVING OF SUPPLIES

The Purchaser shall not refuse to receive Supplies due to minor defects.

## VIII. DEFECTS AS TO QUALITY

The Supplier shall be liable for defects as to quality („Sachmängel“, hereinafter referred to as „Defects“), as follows:

1. All parts or services where a Defect becomes apparent within the limitation period shall, at the discretion of the Supplier, be repaired, replaced or provided again free of charge irrespective of the hours of operation elapsed, provided that the reason for the Defect had already existed at the time when the risk passed.
2. Claims based on Defects are subject to a limitation period of 12 months. This provision shall not apply where longer periods are prescribed by law according to Sec. 438 para. 1 No. 2 (buildings and things used for a building), Sec. 479 para. 1 (right of recourse), and Sec. 634a para. 1 No. 2 (defects of a building) German Civil Code („BGB“), as well as in cases of injury of life, body or health, or where the Supplier intentionally or grossly negligently fails to fulfill its obligation or fraudulently conceals a Defect. The legal provisions regarding suspension of expiration („Ablaufhemmung“), suspension („Hemmung“) and recommencement of limitation periods remain unaffected.
3. The Purchaser shall notify Defects to the Supplier in writing and without undue delay.
4. In the case of notification of a Defect, the Purchaser may withhold payments to a reasonable extent taking into account the Defect occurred. The Purchaser, however, may withhold payments only if the subject-matter of the notification of the Defect occurred is justified beyond doubt. Unjustified notifications of Defect shall entitle the Supplier to have its expenses reimbursed by the Purchaser.
5. The Supplier shall first be given the opportunity to supplement its performance („Nachertüfung“) within a reasonable period of time.
6. If supplementary performance is unsuccessful, the Purchaser shall be entitled to cancel the contract or reduce the remuneration, irrespective of any claims for damages it may have according to Art. XI.
7. There shall be no claims based on Defect in cases of insignificant deviations from the agreed quality, of only minor impairment of usefulness, of natural wear and tear or damage arising after the transfer of risk from faulty or negligent handling, excessive strain, unsuitable equipment, defective workmanship, inappropriate foundation soil or from particular external influences not assumed under the contract, or from non-reproducible software errors. Claims based on defects attributable to improper modifications or repair work carried out by the Purchaser or third parties and the consequences thereof shall be likewise excluded.
8. The Purchaser shall have no claim with respect to expenses incurred in the course of supplementary performance, including costs of travel and transport, labour, and material, to the extent that expenses are increased because the subject-matter of the Supplies was subsequently brought to another location than the Purchaser's branch office, unless doing so complies with the intended use of the Supplies.
9. The Purchaser's right of recourse against the Supplier pursuant to Sec. 478 BGB is limited to cases where the Purchaser has not concluded an agreement with its customers exceeding the scope of the statutory provisions governing claims based on Defects. Moreover, No. 8 above shall apply mutatis mutandis to the scope of the right of recourse the Purchaser has against the Supplier pursuant to Sec. 478 para. 2 BGB.
10. Furthermore, the provisions of Art. XI (Other Claims for Damages) shall apply in respect of claims of damages. Any other claims of the Purchaser against the Supplier or its agents or any such claims exceeding the claims provided for in this Art. VIII, based on a Defect, shall be excluded.

## IX. INDUSTRIAL PROPERTY RIGHTS AND COPYRIGHT: DEFECTS IN TITLE

1. Unless otherwise agreed, the Supplier shall provide the Supplies free from third parties' industrial property rights and copyrights (hereinafter referred to as „IPR“) with respect to the country of the place of destination. If a third party asserts a justified claim against the Purchaser based on an infringement of an IPR with respect to the Supplies made by the Supplier and then used in conformity with the contract, the Supplier shall be liable to the Purchaser within the time period stipulated in Art. VIII No. 2 as follows:
  - a) The Supplier shall choose whether to acquire, at its own expense, the right to use the IPR with respect to the Supplies concerned or whether to

modify the Supplies such that they no longer infringe the IPR or replace them, if this would be unreasonable to demand from the Supplier, the Purchaser may cancel the contract or reduce the remuneration pursuant to the applicable statutory provisions.

- b) The Supplier's liability to pay damages shall be governed by Art. XI.
  - c) The above obligations of the Supplier shall only apply if the Purchaser (i) immediately notifies the Supplier of any such claim asserted by the third party in writing, (ii) does not concede the existence of an infringement and (iii) leaves any protective measures and settlement negotiations to the discretion of the Supplier. If the Purchaser stops using the Supplies in order to reduce the damage or for other good reason, it shall be obliged to point out to the third party that no acknowledgement of the alleged infringement may be inferred from the fact that the use has been discontinued.
2. Claims of the Purchaser shall be excluded if it is itself responsible for the infringement of an IPR.
  3. Claims of the Purchaser shall also be excluded if the infringement of the IPR is caused by specifications made by the Purchaser, to a type of use not foreseeable by the Supplier or to the Supplies being modified by the Purchaser or being used together with products not provided by the Supplier.
  4. In addition, with respect to claims by the Purchaser pursuant to No. 1 a) above, Art. VIII Nos. 4, 5, and 9 shall apply mutatis mutandis in the event of an infringement of an IPR.
  5. Where other defects in title occur, Art. VIII shall apply mutatis mutandis.
  6. Any other claims of the Purchaser against the Supplier or its agents or any such claims exceeding the claims provided for in this Art. IX, based on a defect in title, shall be excluded.

## X. IMPOSSIBILITY OF PERFORMANCE; ADAPTATION OF CONTRACT

1. To the extent that Supplies are impossible to be carried out, the Purchaser shall be entitled to claim damages, unless the Supplier is not responsible for the impossibility. The Purchaser's claim for damages shall, however, be limited to an amount of 10 % of the value of the part of the Supplies which, owing to the impossibility, cannot be put to the intended use. This limitation shall not apply in the case of mandatory liability based on intent, gross negligence or injury of life, body or health; this does not imply a change in the burden of proof to the detriment of the Purchaser. The right of the Purchaser to cancel the contract shall remain unaffected.
2. Where unforeseeable events within the meaning of Art. IV No. 2 substantially change the economic importance or the contents of the Supplies or considerably affect the Supplier's business, the contract shall be adapted taking into account the principles of reasonableness and good faith. Where doing so is economically unreasonable, the Supplier shall have the right to cancel the contract. If the Supplier intends to exercise its right to cancel the contract, it shall notify the Purchaser thereof without undue delay after having realised the repercussions of the event; this shall also apply even where an extension of the delivery period had previously been agreed with the Purchaser.

## XI. OTHER CLAIMS FOR DAMAGES

1. Any claims for damages and reimbursement of expenses the Purchaser may have (hereinafter referred to as „Claims for Damages“), based on whatever legal reason, including infringement of duties arising in connection with the contract or tort, shall be excluded.
2. The above shall not apply in the case of mandatory liability, e. g. under the German Product Liability Act („Produkthaftungsgesetz“), in the case of intent, gross negligence, injury of life, body or health, or breach of a condition which goes to the root of the contract („wesentliche Vertragspflichten“). However, Claims for Damages arising from a breach of a condition which goes to the root of the contract shall be limited to the foreseeable damage which is intrinsic to the contract, unless caused by intent or gross negligence or based on liability for injury of life, body or health. The above provision does not imply a change in the burden of proof to the detriment of the Purchaser.
3. To the extent that the Purchaser has a valid Claim for Damages according to this Art. XI, it shall be time-barred upon expiration of the limitation period applicable to Defects pursuant to Art. VIII No. 2. In the case of claims for damages under the German Product Liability Act, the statutory provisions governing limitation periods shall apply.

## XII. VENUE AND APPLICABLE LAW

1. If the Purchaser is a businessperson, sole venue for all disputes arising directly or indirectly out of the contract shall be the Supplier's place of business. However, the Supplier may also bring an action at the Purchaser's place of business.
2. Legal relations existing in connection with this contract shall be governed by German substantive law, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

## XIII. SEVERABILITY CLAUSE

The legal invalidity of one or more provisions of this contract shall in no way affect the validity of the remaining provisions. This shall not apply if it would be unreasonable for one of the parties to continue the contract.