

## General Conditions of Sale of Südmo Projects GmbH (5.7.07)

### § 1 General – Scope of Application

1. Our conditions of sale shall apply exclusively; we shall not recognise the Purchaser's conditions of sale, which are opposed to or in derogation of our conditions of sale, unless we expressly approved their validity in writing. Our conditions of sale also shall apply if we deliver the order without reservation in the knowledge of the Purchaser's conditions being opposed to or deviating from our conditions of sale.
2. All agreements, which have been made between us and the Purchaser for the purpose of executing this Contract, shall be set forth in writing herein.
3. Our conditions of sale shall apply only to companies within the meaning of sec. 310 (1) German Civil Code.
4. Our conditions of sale also shall apply to all future transactions with the Purchaser.

### § 2 Offer

1. Our offers basically are subject to change without notice.
2. The supporting documents relating to the offer, such as pictures, drawings, weights and dimensions shall be only approximately relevant, unless expressly designated as binding. As for cost estimates, drawings and other supporting documents, we reserve the right of ownership and copyrights; said documents may not be made accessible to third parties. We are obligated to make accessible to third parties only those plans that were approved by the Purchaser.
3. If the Purchaser's samples, drawings and other data are used by us during our production on behalf of the Purchaser, the Purchaser shall solely be responsible to third parties that no third-party rights are violated as a result hereof. The Purchaser also shall be responsible for the correctness of information.

### § 3 Scope of Delivery

1. Our written order confirmation shall be relevant for the scope of the delivery. If an offer submitted by us with a time commitment and Customer within a specific time limit, the offer shall apply unless the order confirmation was not submitted in due time. Ancillary agreements and changes require our written acknowledgement. We reserve the right to make design and form changes of the object of delivery, provided the object of delivery is not changed basically and the change is acceptable to the Purchaser.

### § 4 Prices – Terms of Payment

1. Unless specifically agreed, our prices are "ex works", including loading in the factory, but exclusive of packaging; packaging will be invoiced separately.
2. We reserve the right to change our prices, if price changes in materials occur upon conclusion of contract, cost reductions or cost increases, especially based on collective agreements. Upon request, these changes will be proven to the Purchaser.
3. The statutory VAT is not included on our invoices; on the date of invoicing, the statutory amount will be entered separately on the invoice.
4. The purchase price is payable net (without discount) upon invoicing. The statutory regulations shall apply regarding the consequences of default of payment. The deduction of discount requires a separate written agreement.
5. With order values in excess of € 50,000 net, the following mode of payment shall apply, unless otherwise expressly agreed: One-third deposit upon receipt of the acknowledgement of order, one third as soon as the Purchaser has been notified that the main parts have been shipped, and the residual amount within another month. The respective instalments are payable net (without discount). Payments are to be effected directly to us or an agent, if said agent received the written power of attorney for receiving payments.
6. In International transactions special payment conditions apply, which are specified in greater detail in the respective Offer and/or Confirmation of Order.
7. Checks and bills will be accepted only upon express agreement. The payment is deemed to have been effected only if the payments had been credited to us. Commissions on bills of exchange shall be borne by the Purchaser.
8. If the Purchaser is in default of payment, interest for late payment will be charged in the amount of 8 percentage points of the respective basic interest rate. If we are able to prove higher damage caused by the late performance, we are authorised to assert said damage. The purchaser, however, is entitled to prove to us that, as a consequence of the default of payment, we incurred no or only negligibly damage.
9. The Purchaser shall be entitled to set-off rights only if its counterclaims are undisputed or have been recognised by declaratory judgment. Furthermore, the Purchaser is authorised to exercise the right of retention only if its counterclaim is based on the same contractual relationship and the claim is undisputed or has been recognised by declaratory judgment.

### § 5 Time of delivery

1. The times of delivery are non-binding, as long as the supplier has not confirmed them.
2. The time for delivery starts upon posting the order confirmation, but not before producing the documents, authorisations and releases to be obtained from the Purchaser, as well as receiving an agreed upon deposit payment.
3. The time for delivery is considered to have been maintained, if by the expiration the object of delivery has left the factory or the readiness for shipment has been communicated. If an acceptance test is to be performed, the acceptance date shall be relevant or alternatively the reporting of the Customer's readiness.
4. The delivery period is extended appropriately in the course of labour disputes, in particular during strikes and lockouts and the occurrence of unforeseen obstacles that lie outside our intention, provided such obstacles provably have a considerable influence on the production or shipping of the delivery item. This also applies if circumstances involving a subcontractor occur. The aforesaid circumstances will not be our responsibility either if they occur during an already existing delay; in important cases, the Purchaser shall be notified as soon as possible of the beginning and end of such obstacles.
5. If the Purchaser is in default of taking delivery or if the Purchaser is in breach of other duties to cooperation, we are authorised reimbursement of the damage we incurred, including possible additional expenses. We reserve the right to assert other claims.

6. If the shipment is delayed at the Purchaser's request, starting one month after the notice of readiness for shipment we shall invoice the Purchaser the costs incurred by warehousing; the costs for warehousing at our plant are at least 0.5% of the invoiced amount per month. Upon expiration of a reasonable time limit, however, we are authorised to dispose of the warehoused goods by other means and effect delivery to the Purchaser within a reasonable extension period.

7. The compliance with the delivery deadline requires the fulfilment of the Purchaser's contractual obligations. We reserve the right that supplies are delivered correctly and in due time.

### § 6 Transfer of risks and taking delivery

1. The risks shall be transferred to the Purchaser at the latest upon shipping of the delivery parts, even with partial deliveries, or at the time when we have effected all other performances, e.g., shipping costs or carriage and installation. At the Purchaser's request, we shall insure the delivery item at the Purchaser's cost against theft, damage caused by breakage, transportation, fire and water, as well as other insurable risks.
2. If the shipping is delayed due to circumstances for which the Purchaser is responsible, the risk will be transferred from the day of readiness for shipping to the Purchaser; however, we are obligated to effect the insurance requested by the Purchaser at the Purchaser's costs.
3. The supplied items shall be accepted by the Purchaser, even if they contain negligible damage.
4. Partial deliveries are permissible, if acceptable to the Purchaser.

### § 7 Reservation of title

1. We reserve the title to the delivery items until all payments from the contract of delivery have been effected.
2. We are authorised to insure the item of delivery at the Purchaser's expenses against theft, and damage caused by burglary, fire, water and other damages, unless the Purchaser provably has effected the insurance.
3. The Purchaser may neither pledge nor assign the ownership of the delivery item as security. In case of levies of executions and seizure or other dispositions by third parties, the Purchaser shall notify us immediately to enable us to file an action according sec. 771 Code of Civil Procedure. Should the third party be unable to reimburse us the judicial and extra-judicial costs of an action, the Purchaser shall be liable for the costs incurred.
4. If the Purchaser acts in violation of the contract, especially in the case of default of payment, commencement of insolvency proceedings or violation of an obligation according to subsec. 3 of this provision, we are authorised to take back the item of delivery. Taking back the item is considered to be a withdrawal from the Contract. After taking back the delivery item, we are entitled to utilise it, and the proceeds are to be set off against the Purchaser's liabilities – less reasonable utilisation costs.
5. The Purchaser is authorised to resell the goods in the ordinary course of business. The Purchaser already at this time shall assign to us all claims in the invoice amount, which will arise from the resale to a third party. We accept the assignment. After the assignment, the Purchaser is authorised to collect the claims. We reserve the right to collect the claim ourselves as soon as the Purchaser does not duly meet its payment obligations and is in default of payment.
6. The handling and processing of the goods by the Purchaser shall always be on our behalf and for our order. If the processing involves items not owned by us, we shall acquire joint ownership in the new item in proportion to the value of the goods delivered by us to other processed items. This shall apply if the goods are mixed with other goods not owned by us.

### § 8 Liability for defects

1. The Purchaser's warranty claims require that the Purchaser duly complied with the inspection requirements and the requirement to give notice of defects under sec. 377 German Commercial Code.
2. In the case of a defect of the purchased item, we shall have the option to effect retroactive performance in the form of correction of defects or delivery of a new, flawless item. In the case of correction of defects, we are obligated to carry all expenses for the purpose of the correction of defects, in particular shipping charges, costs of labour and material, provided they are not increased because the purchased item was sent to a location other than the place of performance.
3. Should the retroactive performance fail, the Purchaser has the option to withdraw from the Contract or accepts a reduction in the purchase price. In the case of a negligible breach of contract, especially in the case of a negligible defect, the Purchaser shall not be entitled to withdraw from the Contract, but only to a reduction in the purchase price.
4. Under the legal provisions, we shall be liable if the Purchaser has asserted damages based on intent or gross negligence, including intent or gross negligence of our representatives or vicarious agents. If we are not blamed for intentional breach of contract, the liability for damages shall be limited to foreseeable, typically occurring damage.
5. According to the legal provisions, we shall be liable if we are culpable of having violated a major contractual obligation; in this case, the liability for damages is limited to the foreseeable, typically occurring damage.
6. If the Purchaser is entitled to reimbursement of damages instead of performance, our liability shall be limited within the scope of subsec. 3 of foreseeable, typically occurring damages or a maximum of € 2.5 million.
7. This shall not affect the liability due to culpable injury to life, body or health; it shall apply to mandatory liability under the Product Liability Act.
8. Unless mentioned hereinabove, liability shall be excluded.
9. We shall not be liable for defects that have arisen for the following reasons: Unsuitable or improper use, defective assembly and/or putting into operation by the Purchaser or third parties, natural wear and tear, faulty or negligent treatment, unsuitable operating means, replacement materials, defective construction work, unsuitable construction ground, chemical, electronic influences, unless they are our fault, additional false information of the Purchaser or its consultants regarding operational and technical requirements, as well as chemico-physical conditions for the utilisation of the item of delivery.
10. The period of limitation of warranty claims is 12 months, starting with the transfer of risk.
11. The period of limitation in the case of a delivery recourse according to secs. 478, 479 German Civil Code shall not be effected; it is five years, calculated from the date of delivery of the defective product.

### § 9 Collective liability

1. A continued liability for damages as provided in § 8 is excluded irrespective of the legal nature of the asserted claim. This applies in particular to damages due to fault upon conclusion of contract, due to other breach of duty or tortious claims for replacement in case of property damage according to sec. 823 German Civil Code.
2. If the liability for damages against us is excluded or limited, this also shall apply with respect to personal liability for damages to our employees, collaborators, representatives and vicarious agents.

#### **§ 10 Statutory period of limitations for own claims**

In derogation of sec. 195 German Civil Code, our claims for payment shall lapse in five years. Sec. 199 German Civil Code shall apply regarding the start of the statutory period of limitation.

#### **§ 11 Utilisation of software**

1. If the software is included in the scope of delivery, the Purchaser shall be granted a non-exclusive right of using the supplied software, including its documentation. Said software is permitted to be used on the designated item of delivery. Using the software on more than one system is prohibited.

The Purchaser may duplicate, edit or translate the software only within the permissible scope (sec. 69a et seq. Copyright Act). The Purchaser agrees not to remove producer information - especially copyright notes - without our prior express approval.

3. All other rights in the software and documentations, including copies, shall remain with the supplier and/or software supplier. The granting of licences is not permissible.

4. If the software was not produced by us, the licence conditions of the respective software producer shall apply. In the case of software faults, the supplier shall assign all claims against the software producer to the Purchaser. The Purchaser shall initially assert claims against the software manufacturer only if claims against the producer are uncollectible, the Supplier shall be liable alternatively. There is no obligation to supply updates or upgrades of the software.

#### **§ 12 Additional conditions for assembly work**

If assembly work is to be performed in accordance with the order confirmation, the following additional conditions shall apply.

1. The Purchaser shall support the assembly personnel in performing the assembly at its own expenses.

2. The Purchaser shall take the necessary accident prevention and protective measures in order to protect persons and items at the assembly site. Furthermore, the Purchaser shall inform the assembly manager of existing special safety provisions, provided they are significant for the assembly personnel.

3. The Purchaser shall certify the weekly work hours and performance of the assembly personnel on submission of a corresponding working time form.

4. The Purchaser is obligated to provide the following technical assistance at the Purchaser's expenses:

a) Performance of all excavation, foundation, construction, bedding and scaffolding work, including acquisition of the necessary construction materials. The Purchaser must have completed work before the start of assembly.

b) Providing the necessary suitable staff in the number and for the time required for the assembly. We shall not be liable for the workers.

c) Provision of the required devices and heavy tools, (e.g., lifting tools) and the required equipment and materials (e.g., scaffolding woods, cement, cleaning and sealing material, etc.), including disposal of problematic substances, such as existing oil, grease, asbestos, etc.

d) Provision of heating, lighting, operating power, water, including necessary connections.

e) Provision of necessary, dry, and lockable room for keeping tools of the assembly personnel.

f.) Transformation to the assembly site, protection of the assembly site and materials from damaging influences of any type, cleaning the assembly site.

g) Provision of suitable, burglary-protected recreation and workrooms (with heating, lighting, sanitary facilities) for the assembly personnel.

5. Technical assistance by the Purchaser must be guaranteed, so that the assembly can start immediately upon arrival of the assembly personnel and without delay until the acceptance test by the Purchaser. As soon as other plans or instructions of the supplier (assembly company) are required, these shall be submitted to the Purchaser in due time.

6. If the Purchaser fails to meet its obligations, the supplier (assembly company), following an announcement, is authorised, but not obligated, to perform the acts to which the Purchaser is obligated instead of the Purchaser and at its expenses. In other respects, the legal rights and claims of the supplier (assembly company) shall not be affected.

7. The assembly deadline is considered to have been met if by the expiration of said deadline the assembly is ready for taking delivery by the Purchaser and for trial, if stipulated in the Contract.

8. The Purchaser is obligated to take delivery of the assembly as soon as it has been notified of its completion and the assembled object of delivery has been subjected to a trial, if stipulated in the Contract.

#### **§ 13 Applicable law, jurisdictional venue, place of performance, partial invalidity**

1. The parties agree that the laws of the Federal Republic of Germany shall apply to the business conditions and all legal relationships between the Purchaser and us. The Uniform UN Sales Convention (CISG) shall be excluded.

2. If the Purchaser is a businessperson, a legal entity or a special fund under public law, the jurisdictional venue shall be our place or business. However, we are authorised to take actions against the Purchaser at its local court.

3. The place of performance is Riesbürg.

**Status: 5 July 2007**