

## General Terms and Conditions of Delivery

### I. General

1. All deliveries and services shall be based on these conditions as well as any separate contractual agreements. Divergent purchasing conditions of the Purchaser shall not become a part of the contract even upon acceptance of the order, but only where expressly accepted in writing by TIETJEN Verfahrenstechnik GmbH (afterwards called "TIETJEN"). Unless otherwise agreed, a contract shall be concluded upon written confirmation of order by TIETJEN.

2. TIETJEN reserves title and copyright to samples, cost estimates, offers, drawings and similar information in physical and non-physical (including electronic) form; they must not be made accessible to third parties. TIETJEN shall undertake not to make information and documents designated as confidential by the Purchaser accessible to third parties without the latter's consent.

3. TIETJEN reserves the right to modify the technical information of its products before approval insofar as to improve performance, if it is reasonable concerning the product's reliability or to insure compliance with requirements for certification or official regulations. TIETJEN will promptly inform the Purchaser about modifications. The Purchaser is entitled to object within a deadline of two weeks, if the modifications affect his purposes in respect to the capability of the delivered good.

4. Only legal representatives and authorized representatives of TIETJEN are entitled to provide guarantee commitments

### II. Price and Payment

1. In the absence of a special agreement, the prices shall apply ex works (Incoterms 2000), but including loading in the works, however not including packing and unloading. The prices are net, excluding all taxes, duties or imposts payable under applicable law. Purchaser agrees to pay or reimburse TIETJEN for any such taxes, duties or imposts which TIETJEN or its subcontractors are required to pay.

2. The Purchaser shall only be entitled to offset against counterclaims insofar as its counterclaims are undisputed or have been finally determined in a legally binding manner. This shall also apply to the right to withhold payments.

3. The Purchaser shall be in default when a reminder is sent after the due date, but at the latest 30 days after the due date and receipt of an invoice or an equivalent demand for payment from TIETJEN. If the Purchaser is in default with a payment, he shall be liable, without reminder, to pay default interest at a rate exceeding by 8 % the current base rate of interest issued by the European Central Bank.

### **III. Delivery time and delays**

1. The delivery time shall be specified in the agreements between the contracting parties. Performance within the stipulated time for delivery is subject to the timely receipt by the Supplier of all documents, necessary releases, especially of plans to be provided by the Purchaser and to the clarification of all commercial and technical questions between the contracting parties as well as fulfillment of the Purchaser's obligatory duties, such as providing the required official certificates or approvals or making a down payment. If this is not the case, the delivery time shall be extended by a reasonable period provided that and insofar as the delay is not attributable to TIETJEN. This applies also in cases of subsequent changes requests made by the Purchaser and accepted by TIETJEN.

2. If non-performance of the time for delivery is due to force majeure including impediments, accidents or disturbances, which could not be avoided despite application of due care the time for delivery shall be extended accordingly. Force majeure events shall include - but are not be limited to - mobilization, war, civil insurrection, terrorism, acts of government, non granting of required export permissions, epidemics, strike, lock-out, raw material shortages, lack of transportation, interruption of electricity and forces of nature. An extension of the time for delivery also applies if TIETJEN does not receive its own deliveries to the correct specifications and on time. TIETJEN shall notify the Purchaser as soon as possible of any imminent delays.

3. The delivery deadline shall be construed as met when the delivery item is ready for loading before the deadline has expired and the Purchaser has been notified of its readiness for dispatch.

4. If the dispatch respective the acceptance of the delivery item is delayed for reasons within the Purchaser's responsibility, then it shall be invoiced with the costs incurred by the delay, beginning one month after notification of readiness for dispatch.

5. Liability of TIETJEN for damages due to delay of delivery attributed to TIETJEN is limited – prior to Art. VII 3 – to 10 % of the purchase price of the delivery item.

6. The Purchaser may withdraw from the contract without giving prior notice if the entire work becomes definitely impossible for TIETJEN prior to transfer of risk. In addition the Purchaser may withdraw from the contract if in case of a particular order it becomes impossible to carry out a part of the delivery and it has a justified interest in declining the part-delivery. If this is not the case, the Purchaser must pay the contractual price accounted for by the part-delivery concerned. The same shall apply in the event of incapacity of TIETJEN. Otherwise Art. VII. 2 – 4 shall apply.

7. If the impossibility or incapacity occurs during delay of acceptance, or if the Purchaser is solely or predominantly responsible for these circumstances, it shall remain obligated to provide consideration.

#### **IV. Transfer of risks**

1. The risk of damage or loss shall pass to the Purchaser when the delivery item has left the works and also even if partial deliveries are made or TIETJEN has agreed to perform additional services such as dispatch, delivery and installation (assembly).
2. If dispatch is delayed or if the item is not dispatched due to circumstances, for which TIETJEN is not responsible, the risk of damage or loss shall pass to the Purchaser the day the Purchaser has been notified of the item's readiness for dispatch. TIETJEN shall be obligated to contract insurance according to the Purchasers demand and at its expense.
3. Partial deliveries shall be permitted insofar as reasonable for the Purchaser.

#### **V. Reservation of title**

1. TIETJEN shall reserve title to the delivery item until all due contractual payments have been provided.
2. The Purchaser shall be obligated to treat the goods subject to retention of title carefully and to insure them adequately against theft, break, fire, water and similar damages. TIETJEN is entitled to insure the delivery item at the Purchaser's costs unless it can provide proof that it has obtained the insurance himself.
3. The Purchaser may neither sell, pledge nor transfer the delivery item to third parties as collateral. In the event of pledging, seizures or other actions of third parties the Purchaser shall inform TIETJEN without delay.
4. Should the Purchaser act in breach of contract, particularly in the case of deferred payment, TIETJEN shall be entitled to recover the delivery item after due notice and the Purchaser shall be obligated to hand the delivery item over. Taking back the delivery item shall not represent withdrawal from the contract.
5. The Purchaser shall only be entitled to resell the delivery item in the ordinary course of business if he is effectively capable to assigns herewith to TIETJEN all claims in the amount of the commercial invoice of the reserved item, which may accrue to him against his customers or third parties from resale. The Purchaser shall remain entitled to collect these claims even after assignment as long as he complies with his contractual obligations and no insolvency exists. The right of TIETJEN to collect the claims itself shall not be affected. However, TIETJEN shall undertake not to collect the claims provided that the Purchaser complies with his payment obligations and is not in arrears. TIETJEN may request the Purchaser to inform about the assigned claims and their debtors, provide all necessary information relating to collection, hand over the related documents and inform the debtors regarding assignment. TIETJEN shall undertake to release the securities accruing to the Purchaser if the attainable value of his securities exceeds the claims to be secured by more than 15 %.

## **VI. Liability for defects**

As a prerequisite for TIETJEN's defects liability, the Purchaser shall be obligated to immediately carefully check the delivery item for completeness and correctness. Notification of any defects has to be in writing and without delay. This applies also for subsequently detected defects. Subject to Art. VII. TIETJEN shall provide a warranty for defects of material and defects of title as follows to the exclusion of all further claims:

### **Material defects**

1. TIETJEN shall be obligated to repair or replace all parts free of charge that turn out to be unusable or impaired if the circumstances causing the defects occurred before pass of risk. TIETJEN shall be informed immediately in writing. Replaced parts shall become property of TIETJEN.
2. Upon consultation with TIETJEN the Purchaser shall grant TIETJEN reasonable time and opportunity for all repair and replacement delivery necessary; otherwise TIETJEN shall be exempt from liability for any and all consequences arising therefrom. Only in urgent cases of threats to the operational safety and in order to prevent excessively great damages, the Purchaser shall have to right to remedy the damage by himself or a third party and then to claim the expenses for the corrections from TIETJEN.
3. The costs arising from the repair or replacement delivery including shipping costs are borne by TIETJEN, provided that the complaint proves justified. In addition it shall bear the costs of disassembly and assembly as well as the costs of providing the required mechanics and assistants including travel expenses, provided this is not an unreasonable burden imposed on TIETJEN.
4. The Purchaser shall only be entitled to withdraw from the contract – if withdrawal is not excluded by law – after the unsuccessful expiry of a reasonable period of grace granted by him for supplementary performance. In case of only a minor deficiency, the Purchaser shall merely have the right to reduce the contractual price. For the remainder the right to demand a reduction in the contractual price shall be excluded. All other claims shall be determined in accordance with Art. VII. 2 – 4 of these terms and conditions.
5. In particular, no liability shall be accepted in the following circumstances:  
  
Unsuitable or unqualified use, imperfect assembly respectively initial operation by the customer or a third party, normal wear and tear, incorrect or negligent treatment, improper maintenance, unsuitable expendables and replacement materials, defective construction work, unsuitable construction ground, chemical, electrochemical or electric influences, unless they can be traced back to negligence on part of TIETJEN.
6. If the customer or a third party effects improper improvement, TIETJEN shall not be liable for the consequences arising therefrom. The same shall apply for modifications to the delivery item made without prior consent of TIETJEN.

7. Subsequent performance – irrespective of its extent – shall not be considered as an acknowledgement of any asserted defects by TIETJEN. Only legal representatives and authorized representatives are entitled to provide acknowledgements.

8. In so far as a complaint of a defect proves unjustified, TIETJEN shall claim compensation for the necessary expenses arising therefrom.

### **Deficiency in title**

10. If not otherwise expressly agreed upon, responsibility of TIETJEN for the delivered goods not to be in breach of any third-party industrial property rights or copyrights (hereinafter referred to as: proprietary rights) is limited to Germany and the country of delivery. Should the use of the goods result in an infringement of proprietary rights, TIETJEN shall, as a rule, at its own expense make available to the Purchaser the right to continue to use the goods or to modify the goods in a way reasonably acceptable for the Purchaser so that they no longer infringe proprietary rights. Where doing so would be disproportionately uneconomical or impossible within a reasonable period of time, the Purchaser shall be entitled to withdraw from the contract. Where the above prerequisites apply, TIETJEN shall be likewise entitled to withdraw from the contract. Furthermore, the Supplier shall hold the Purchaser harmless for all undisputed or in a legally binding manner determined claims on the part of the holder of the proprietary right in question.

11. Subject to Art. VII. 2 – 4 the duties of TIETJEN laid down in Art. VI. 8 are final for the case of a breach of proprietary rights. They shall only exist if

a) the Purchaser informs TIETJEN without delay about claims due to breach of proprietary rights,

b) the Purchaser duly supports TIETJEN to a reasonable extent in the defense of the claims raised respectively to enable TIETJEN to modify the delivery item according to Art. VI. 9,

c) all defense measures including out-of-court settlements are reserved to TIETJEN

d) the legal defect is not based on an instruction by the Purchaser and

e) the legal violation was not caused by an unauthorized modification of the delivery item by the Purchaser or use of the item by him in a manner which does not comply with the contract.

### **VII. Liability**

1. If the Purchaser cannot use the goods for the contractual purpose due to omitted or incorrect proposals or advice given by TIETJEN prior to or following the conclusion of the contract or by reason of the breach of other collateral obligations, including but not limited to, operation and maintenance instructions, the provisions of Art. VI. and Art. VII. 2 – 4 shall apply mutatis mutandis and any other claims of the Purchaser shall be excluded.

2. The liability of TIETJEN for damage that has not occurred to the goods themselves – irrespective of the legal grounds – shall be limited to

- a) cases where the Contractor negligently causes death or personal injury,
- b) defects TIETJEN has fraudulently concealed or whose absence it has expressly guaranteed,
- c) cases of defective goods causing death, injury or damage to property used privately.

3. Neither Party shall be liable to the other Party for any indirect or consequential financial loss or damage and in particular not for loss of use of any Works, loss of profit or loss of any contract which may be suffered by the other Party in connection with the Contract unless stated otherwise in this contract.

The total liability of one Party to the other under or in connection with the Contract shall not exceed the total net price owed by the Purchaser.

4. This Art. III does not limit the liability of a Party in any case of

- a) intent,
- b) reckless misconduct or
- b) gross negligence

#### **VIII. Limitation period**

All claims of the Parties shall – irrespective of the legal grounds – be time-barred after a period of twelve months after delivery or withdrawal of the contract.

#### **IX. Use of software**

To the extent that software is included in the scope of delivery, the Purchaser is herewith granted the non-exclusive right to use the software and documentation supplied. Its use is permitted with respect to the goods supplied. The software shall not be used on more than one system. The Purchaser shall be allowed to copy, revise or translate the software or convert the object code into the source code only as legally permitted (Sec. 69 et seq. of the German Copyright Act). The Purchaser undertakes not to remove manufacturer identification labels - including, but not limited to copyright marks - without having obtained the prior express consent of the TIETJEN. All other rights to the software and documentation, including any copies that may exist, shall remain with TIETJEN and/or the software supplier.

## **X. Dispute Settlement / Applicable Law**

1. All disputes arising out of or in connection with the Contract, including any question regarding its existence, validity or termination, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (Paris) by three arbitrators appointed in accordance with the said Rules. Each party shall nominate one arbitrator for confirmation by the competent authority under the Rules (Appointing Authority). Both arbitrators shall agree on the third arbitrator within 30 days. Should the two arbitrators fail, within the above time-limit, to reach agreement on the third arbitrator, he shall be appointed by the Appointing Authority. If there are two or more defendants, any nomination of an arbitrator by or on behalf of such defendants must be by joint agreement between them. If such defendants fail, within the time-limit fixed by the Appointing Authority, to agree on such joint nomination, the proceedings against each of them must be separated. The language to be used in arbitration proceedings shall be English. The seat of arbitration shall be Hamburg. The procedural law of this place shall apply where the Rules are silent.

2. This Contract shall be subject to Swiss law. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

## **XI. Miscellaneous**

1. Mistakes, unintended gaps and contradictions in the Contract are to be treated and construed in accordance with the spirit of this Contract on the basis of mutual trust and of the mutual interests of both parties.

2. In the event of legal invalidity of individual stipulations, the other parts of this Contract shall remain valid. The aforesaid shall not apply where compliance with the terms of this Contract would constitute unacceptable hardship for either party.