

General Conditions of Supply and Delivery

I. Scope of supplies or services

- The scope of supplies or services shall be governed by mutual declarations in writing. Where an agreement has been entered into without such mutual declarations either the written order confirmation by the Supplier or Performer (in the following: the Supplier) shall govern, or where such order confirmation has not been issued the written order of the Purchaser.
- Protective devices will be supplied to the extent required by law or expressly agreed upon.
- All supplies or services shall be governed by the rules of the Verband Deutscher Elektrotechniker (Association of German Electrical Engineers) insofar as safety of supplies or services is concerned. Deviations are permissible if the same safety standard will be achieved by different means.
- Supplier reserves all titles and property rights and rights originating from copyright on cost estimates, drawings and other documents; such may not be disclosed to third parties without the prior consent of Supplier. All drawings and other documents pertaining to quotations shall immediately be returned on request if the order is not placed with the bidder. Foregoing sentences 1 and 2 shall apply accordingly to documents of Purchaser. They may, however, be made available to those third parties, which perform services or supplies for the Supplier in cases where this is permitted.
- Additional agreements shall not be binding unless confirmed in writing.

II. Prices

Where supply offered does not include erection or installation, prices quoted are ex works, excluding packing.

III. Retention of title

Title to all goods is retained by Supplier until each and every claim of Supplier against Purchaser originating in the business relations has been fully satisfied. Prior to this event goods may not be pledged or given as security and may only be re-sold by resellers in the normal course of business, against payment from their Customers. Any costs incurred in connection with interventions following this Section shall be borne by Purchaser. If the value of the sureties accruing to the Supplier in performance of sentence 1 exceeds the value of all privileged claims by more than 25 %, Supplier shall upon request release a respective part of the sureties.

IV. Conditions of payment

- Payments shall be made free paying-office of Supplier.
- Purchaser may set off only such claims as are undisputed or finally determined.

V. Period for supply of deliveries or services

- The period for supply of deliveries and services shall be governed by the mutual written declarations. Section I No. 1 Sentence 2 shall apply accordingly. Timely supply is conditioned upon timely receipt of all documents to be furnished by Purchaser, necessary licenses and releases, timely clarification and approval of plans and observance of the terms of payment agreed upon and all other obligations. If these conditions are not timely fulfilled, the period for supply shall be appropriately extended.
- Above period shall be deemed to have been met:
 - Where supply does not include erection or installation, if the goods, ready for operation, have been delivered to the carrier or picked up within the agreed period. If delivery is delayed for reasons for which the Purchaser is responsible supply shall be deemed timely if notice that goods are ready for shipment has been given within the agreed period.
 - Where supply includes erection or installation, if such erection or installation has been completed within the agreed period.
- If the period for supply of deliveries or services can be proven to have been exceeded because of mobilization, war, riot, strike, lockout, or in the event of unforeseeable circumstances, such period shall be adequately extended. If such period is exceeded for reasons other than those stated in sub-section 3 § 1, the Purchaser - insofar as he can establish credibly that he has suffered damage owing to the delay - may claim liquidated damages of ½ % for every completed week's delay up to an overall total of 5 % of the value of that part of supplies or services which could not be taken into useful operation owing to individual components thereof not having been furnished in time. Purchaser shall likewise be entitled to liquidated damages in case of circumstances as described under sub-section 3 para 1 arising only after period of supply of deliveries or supplies originally agreed upon has been culpably exceeded by Supplier. All further damages for delay as may be claimed by Purchaser exceeding the margin of 5 % as ruled under para 2 are expressly excluded even if an additional period of time as may have been granted to Supplier has expired. This does not apply where in cases of intent or gross negligence Supplier's liability is enforced by law. The right of Purchaser to cancel the Contract after an additional period of time granted to the Supplier has ineffectively expired, shall remain unaffected.
- If shipment or delivery is delayed at Purchaser's request, storage costs to the sum of ½ % of the invoiced amount may be charged for every month commenced beginning one month after notice has been given that goods are ready for shipment. Such charge shall be limited to an overall total of 5 % unless costs incurred can be proven to be higher.

VI. Transfer of risk

Risk shall pass to Purchaser, even if freight delivery paid has been agreed upon:

- Where supply offered does not include erection or installation: whenever goods ready for operation have been delivered to carrier or picked up. Every care shall be taken in packing. Shipment shall be carried out to the best of Supplier's judgment. At the request and expense of Purchaser, goods shipped will be insured by Supplier against breakage, damages in transit or fire.
- Where supply offered includes erection or installation: the day Purchaser has taken over goods for operation; insofar as a test run has been agreed upon, whenever such run has been satisfactorily completed. Assumption hereto is that the test run or taking over for operation shall take place immediately following erection or installation declared ready for operation. If Purchaser fails to accept the offer of a test run or to take over for operation, risk for the period of delay arising there from shall pass to Purchaser after a period of 14 days following such offer.
- If shipment, delivery, commencement or execution of erection or installation is delayed at the request of Purchaser or for reasons within Purchaser's responsibility, risk shall pass to Purchaser for such period of delay. Supplier however undertakes to effect at Purchaser's expense such insurances as requested by Purchaser.
 - power and water including the necessary connections up to point of use, heating and general lighting;
 - suitable and dry rooms of sufficient size at the site which can be locked for storage of machinery-parts, equipment, materials, tools etc. as well as adequate working rooms and accommodation for Supplier's personnel including reasonable sanitary installations. Furthermore Purchaser must follow the same provisions for safeguarding the property of Supplier and erection personnel at the site as he would for his own;
 - protective clothing and protective devices which are necessary owing to particular conditions at site and which are not usual in Supplier's trade.
- Before commencement of erection work, Purchaser must make available of his own accord necessary information concerning all concealed electric cabling, gas- or water-pipes and the like as well as necessary information on static's.
- Before commencement of erection or installation, the parts required for initiating the work must be at hand and all masonry, carpentry and other preparatory work must be so far advanced that erection or installation may begin immediately upon arrival of erection or installation personnel and proceed without interruption. In particular, the approach roads and the site for erection or installation itself must be level and clear, foundations must be dry and set, foundation walls erected and backfilled, and in the case of indoor work, the rendering of walls and ceilings must be complete and especially, doors and windows must have been fitted.
- If installation, erection or commencement of operation is delayed owing to circumstances particularly at the site the Supplier may not be held responsible for, Purchaser shall bear the reasonable costs for stand-by time and any additional traveling expenditures of erection or installation personnel.

- Working hours shall be certified at weekly intervals to erection or installation personnel by Purchaser to the best of his knowledge. Moreover, Purchaser shall immediately confirm in writing to erection or installation personnel completion of erection or installation work.
- Supplier shall not be liable for any work executed by his erection or installation personnel or other agents that is not related to supplies and erection or installation or insofar as it has been initiated by Purchaser.

B. If Supplier has undertaken to provide erection or installation on an actual cost basis, the following conditions shall apply in addition to those as under A:

- Purchaser shall make payments to Supplier according to rates of charge for working hours agreed upon at time of order together with premiums for overtime-, night-, Sunday- or holiday work, work under unusually difficult conditions, planning and supervision. Time spent for preparations, traveling, errands and reporting shall be deemed as working hours.
- Moreover, the following costs shall be paid separately:
 - Traveling expenditures, costs for transport of tools and personal luggage.
 - Daily allowance for working hours as well as for off-days and holidays.

VIII. Acceptance

- Goods delivered shall be accepted by Purchaser even if they show minor defects.
- Partial deliveries are admissible.

IX. Liability for faults

The Supplier shall be liable for faults including failure to achieve assured characteristics as under:

- The Supplier shall at his discretion repair or replace such part or perform anew such services free of charge as have become of no use or markedly impaired in usefulness within 12 months after transfer of risk - regardless of actual operating time - owing to circumstances prior to transfer of risk, particularly such as faulty design, materials or workmanship. Supplier must be informed in writing of such faults immediately after they have been noticed.
- Purchaser has to comply with his contractual obligations, in particular with the agreed conditions of payment. If complaint in respect to a fault is made, Purchaser may withhold payments to an extent, which is fair and reasonable in respect to the faults occurred. However, if the Contract is entered into in pursuance of Purchaser's line of business payments may only be withheld under the condition that, the complaint in respect to a fault is justified beyond any reasonable doubt. Purchase shall grant the Supplier such adequate time and opportunity as Supplier deems reasonable to remedy the faults. In case of refusal Supplier's liability shall be waived.
- If Supplier lets expire an adequate extension of time as set by Purchaser without remedying the fault, Purchaser shall have the right to cancel the Contract (cancellation) or claim a reduction of price (reduction).
- Right of Purchaser to lodge claims owing to faults shall in any case be barred after a period of 12 months has expired beginning from the date of above complaint. If no agreement is reached within this period of time, Supplier and Purchaser may agree to an extension of said period.
- Liability for faults does not cover natural wear and tear nor damage arising after transfer of risk owing to faulty or negligent handling, excessive strain, unsuitable materials for operation, deficient civil engineering work, unsuitable soil conditions, and such chemical, electrochemical or electrical influences as were not assumed at the time of the Contract.
- All liability for consequences of any inexpert alterations or repairs carried out by Purchaser or a third party shall be waived.
- Period of liability for faults in repairs shall be 3 months, for replacements or renewals 6 months. However, above period shall run at least until expiry of warranty period as originally provided for in respect of the contractual goods.
- If parts of supplies cannot be put into efficient operation owing to an interruption of work caused by repairs, replacements or corrected services, period of liability for faults for such parts shall be extended by same period of interruption.
- The provisions concerning periods of liability for faults under paras 1, 5 and 8 shall not apply where longer periods are enforced by law.
- Supplier or supplier's agents shall in no event be liable to Purchaser for any further claims, particularly claims for damages not affecting the goods themselves. This shall not apply where liability is enforced by law in cases of intent, gross negligence or failure in assured characteristics.
- Sub-section 1 to 10 shall apply accordingly to claims of Purchaser concerning repair, replacement or damages originating from proposals or advice given within the scope of the Contract or originating from a breach of secondary contractual obligations.

X. Impossibility of performance; adjustment of Contract

- If Supplier or Purchaser are unable to perform their supplies or services, general legal principles shall apply, subject to the, following conditions:

If Supplier may be held responsible for inability, Purchaser is entitled to claim damages. However, liability of Supplier shall be limited to 10 % of the value of that part of services or supplies which, owing to the inability, cannot be put into useful operation. Damages of Purchaser exceeding said margin of 10 % are excluded. This does not apply where liability is enforced by law in cases of intent or gross negligence. The right of Purchaser to cancel the Contract shall remain unaffected.
- Insofar as unforeseen events as described under Section V, Subsection 3 para 1 materially affect the economic consequences or substance of the supplies or services or have a major effect on Supplier's business, the Contract shall be adjusted reasonably within good faith. If this is not justifiable from an economic point of view Supplier may cancel the Contract. If he wishes to exercise this right of cancellation, he shall inform Purchaser of such intention immediately after recognizing the significance of the event; this shall apply even where in the first instance an extension of delivery period has been agreed upon with the Purchaser.

XI. Further claims for damages

Claims for damages on the part of the Purchaser arising from breach of secondary contractual obligations, obligations during the stage of contractual negotiations and tort are excluded. This does not apply where liability is enforced by law in cases of intent or gross negligence by Supplier, his legal representatives or agents. This limitation shall apply accordingly in respect of the Purchaser.

XII. Place of jurisdiction

- If Purchaser is a company or business man, exclusive place of jurisdiction in case of all litigations arising directly or indirectly out of this Contract shall be at the discretion of Supplier the domicile of Supplier's head or branch office.
- Contractual relations shall be governed by German law.

XIII. Validity of Contract

If any provision of this Contract is void the remaining part of the Contract shall remain unaffected. This shall not apply if adherence to the Contract should mean an unreasonable hardship to any one Party.

BOGEN ELECTRONIC GMBH
Berlin, im August 2000

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