

Terms and conditions of sale (export orders)

September 2004

1. Preamble

We shall conclude contracts with you only on the following terms and conditions. Acceptance of an order will not imply acceptance of different contract purchase conditions.

2. Conclusion of contract

2.1 Any agreements between us must be in writing.

2.2 Our confirmation of order must be issued in writing. If it contains minor modifications or additions to your order, you will be deemed to be in agreement therewith unless you object in writing within four weeks of receipt.

2.3 Information which appears in catalogs, circulars, price lists, etc will form part of the contract only if we expressly refer to it in writing.

2.4 We have the right to withdraw from the contract exempt from any charges if the required export permits or export insurances cannot be obtained or cannot be obtained within a reasonable time.

2.5 You will confirm that, prior to conclusion of the contract, you have informed us of any and all statutory, official or other requirements which are mandatory for implementation of the contract in your home country.

3. Intellectual property

3.1 Plans, software and other documents will remain our property. They may be used only to the extent permitted by ourselves and must not be modified, reproduced or made available to third parties.

Our terms and conditions governing rights to software use will also apply.

3.2 Where delivered items or parts thereof are protected by copyright, we shall grant you a non-exclusive and nontransferable right to use the same within your company in conformity with the contract. Otherwise, the rights of use will remain with us and/or the manufacturer. Reproductions or adaptations will require our prior consent in writing.

3.3 Business or brand names and other identifying marks on the items supplied by us must not be removed or modified.

4. Delivery date

4.1 An agreed delivery period will begin as soon as the contract has been concluded, all official formalities have been completed, all the technical information required to process the order is available, agreed advance payments have been made, and agreed security for payment has been provided. The delivery period shall be deemed met if you receive advice from us within that period that we are ready to ship.

Where goods have to be accepted, the agreed acceptance date will be the determining date. In this event, the delivery period shall be deemed met if we have advised you by the agreed acceptance date that we are ready for acceptance.

4.2 If items to be delivered have to be run in at our works and if you do not make the necessary test materials available to us on schedule and free of charge after we have requisitioned them well in advance, the delivery period will be extended accordingly. Costs incurred thereby will be borne by yourselves.

4.3 Compliance with the delivery period will be dependent on performance of your contractual obligations, in particular compliance with the terms of payment.

If modifications to the items to be delivered are agreed at your request after the contract has been concluded, the delivery period may be extended accordingly.

4.4 In the event of delay in delivery, where we are responsible for such delay, you will have the right to rescind the contract only if you grant us a reasonable grace period and expressly state at the same time that you refuse to accept performance of the contract after expiry of that period, and if we do not then effect performance within the grace period set.

4.5 If the delay in delivery in full or in part is our fault, you may demand compensation for the damage demonstrably suffered by you as a result of delayed performance. For each full week's delay this will be 0.2 %, up to a maximum of 5 %, of the value of that part of the total delivery which cannot be used on time or in conformity with the contract as a result of the delay. There will be no entitlement to compensation for the first two weeks' delay.

No further claims for compensation will be allowed on the basis of a delay for which we are responsible, subject to Clause 8.2.

5. Passage of risk

5.1 The delivery terms will be Ex Works (in conformity with the latest version of Incoterms).

Partial deliveries are allowed.

If delivery is carried out in installments, or if we wholly or partly assume responsibility for or arrange other services, e.g. transportation costs and insurance, or installation, as per your order, the risk will pass to you no later than the time when each installment is dispatched.

Risk of damage or loss of the Goods shall pass finally to you in accordance with the agreed Incoterm-Clause. From this point on, you are therefore obliged to insure the entire value of the contract against all risks until the final acceptance of the Goods, if this has to be certified, in any case until we have received full payment of the value of the contract. We reserve the right to request from you appropriate evidence of this insurance.

Irrespective of any formal acceptance procedure, the delivery will be deemed accepted if you avail yourself of, or otherwise use, the delivered items over a period of four weeks.

Packing will be appropriate for the method of dispatch and will be invoiced by us. Packaging is not returnable.

5.2 If you do not immediately accept the delivery on the agreed delivery date after we have notified you of our readiness to ship, we will be entitled to store and insure the items declared ready for delivery at your risk and expense. You will bear any costs incurred through the delay in acceptance. Non-acceptance of the

delivery will not exempt you from your obligation to pay the purchase price. After expiry of a reasonable time set by us, we will, in this event, also be entitled to otherwise dispose of the items concerned and then to re-supply you within a reasonable period.

5.3 Delivered items are to be received by you, notwithstanding the rights referred to in Clause 7. This will not apply if these items obviously have significant defects.

5.4 If delivery in full or in part finally becomes impossible for us prior to the passage of risk, you will have the right to rescind the contract. If such impossibility occurs during the delay in your acceptance, or is your fault, you will still be bound by your contractual obligations.

6. Machine and plant safety

Machines, plant and the like delivered by us will conform to the statutory safety and accident prevention regulations in force in the Federal Republic of Germany unless we have agreed otherwise. Such items may be installed and operated only by skilled staff in accordance with our documentation.

7. Warranty

We warrant the merchantable quality and title of the delivered items, including any features promised, to the exclusion of further claims, subject to Clause 8.2 as follows:

Defects of quality

7.1 We warrant that the material, construction and design are free from defects.

7.2 The warranty period will be 12 months for delivered equipment utilised one-shift operations and will commence with commissioning, or with your acceptance of the delivered item where provision is made for this (for spare parts upon delivery). The warranty period will, however, run for a maximum of 18 months after we have notified you of our readiness to ship. For multiple-shift operations the warranty period will be reduced accordingly and will in any event be limited to 2100 hours of operation.

7.3 We will correct defects which occur and are reported within the warranty period free of charge, either by making free of charge replacement deliveries or by duly rectifying the defects at the place of destination, at our discretion.

Defective parts will become our property once they are replaced, and are to be returned to us at our request immediately after replacement.

7.4 The following circumstances will not be covered by our warranty:

7.4.1 if you fail to notify us of the defect immediately in writing or fail to provide us with reasonable assistance to enable us to correct the defect, or

7.4.2 where defects have been caused by improper operation or treatment of the delivered items, by failure to comply with the operating instructions, operating conditions or service and maintenance intervals, by natural wear and tear (e.g. consumables), or by the use of non-specified materials or replacement materials, or

7.4.3 if, without our consent, modifications or repairs are made to the delivered item, or the spares used are not supplied by us, or

7.4.4 if our products have not been installed or commissioned by our staff, unless there is a written agreement to the contrary, or the defects are not demonstrably in the material, construction or design.

7.5 if at any time you default on performance of your contractual obligations to us, we will be entitled to refuse to honor warranty claims. The warranty period stipulated under Clause 7.2 will not be extended for this reason.

7.6 if, despite a reasonable time limit and an additional extension if necessary, we culpably fail to meet our obligation to rectify a defect we have a duty to correct, you will be entitled to have the defect duly remedied at our expense with all due care after you have notified us in writing.

You are always obliged to take all necessary measures to minimize losses immediately.

7.7 if, in the event of a defective delivery, it proves impossible or economically not viable to rectify such defects, or if repeated attempts to do so should ultimately fail, you will have the right to cancel the sale only where agreement is not reached on a reasonable reduction in the purchase price.

7.8 if the sale is cancelled, all further claims will be excluded, subject to Clause 8.

7.9 if the delivered item cannot be used in conformity with the contract and we are at fault through having given the wrong advice or having failed to fulfill our secondary obligations, the provisions of this Clause 7 (Defects of quality) will apply accordingly.

Defects of title

7.10 If use of the delivered item within the periods referred to in Clause 7.2 leads to the infringement of industrial property rights or copyright in your home country, we will either obtain the right of continued use for you or we will modify the delivered item to prevent continued infringement of the industrial property right, at our discretion.

If this is not possible under economically viable conditions, we will take the delivered item back and refund the contract price.

We will also indemnify you against claims by the owners of the industrial property rights concerned, where such claims are undisputed or upheld in a non-appealable judgement.

7.11 Subject to Clause 8.2, the above undertakings will be final in the event of industrial property right or copyright infringement.

They will apply only if

– you inform us immediately of the industrial property right or copyright infringement claims,

– you provide us with reasonable assistance to counter these claims and enable us, where appropriate, to make the modifications referred to in Clause 7.10,

– we reserve the right to take any action to counter these claims, including the right to settle out of court,

– the delivered item has not been manufactured or modified in accordance with your instructions, and

– the infringement did not occur because you altered the delivered item independently or used it in violation of the contract.

8. Limitation of liability

8.1 Subject to binding statutory requirements, we shall be liable for personal injury and damage to property in so far as damages are paid by our liability insurer within the limits of the sums insured and the terms of our insurance policy. We shall supply you with evidence of the extent of our liability insurance on request.

8.2 You will not be entitled to make claims other than those referred to in Clauses 4, 5.4, 7 and 8.1, except in cases of willful intent or gross negligence on the part of our company management or one of its senior staff.

In particular, you will have no claims for compensation for indirect or consequential damage not caused to the delivered item itself.

In the event of gross negligence on the part of our senior staff, liability will be restricted to a maximum of 10 % of the delivery value.

8.3 We will not be liable for the suitability of the premises, building or facilities for the installation and operation of the products supplied.

9. Prices

9.1 Our prices will apply to delivery unpacked Ex Works.

Deliveries to the Federal Republic of Germany will also attract turnover tax at the prevailing statutory rate. This will also apply to agreed advance payments.

9.2 If, in exceptional circumstances, the agreed price should be in a foreign currency and the exchange rate should alter, we reserve the right to adjust the price up to the time we receive the purchase price.

9.3 If a price is not agreed for a delivery, we shall invoice you at our list price as valid on the date of delivery.

9.4 If we mutually agree on a modification to the delivered items after conclusion of the contract, you will bear all the costs incurred thereby.

9.5 Our claim to damages under Section 377 of the Swiss Law of Obligations will be determined by the deduction method where appropriate.

9.6 The cost incurred in payment transactions will be borne by each Party.

9.7 Costs which we incur due to late return of bank guarantee / surety documents will be reimbursed by yourselves.

9.8 Any additional costs incurred at home and abroad which are not covered by the agreed Incoterm clause (in conformity with the latest version of Incoterms), such as inspection costs, storage cost, consulate and certification fees incurred in connection with the delivery are to be borne by you. The same applies to taxes accrued outside the Federal Republic of Germany.

10. Terms of payment

10.1 The purchase price and additional costs, e.g. for packing and freight, are payable to us without deduction within 14 days of the invoice date. Any payments, including those involving bills of exchange, will not be deemed to have been made until we can freely draw on them.

10.2 You will have the right to withhold payment or to set payments off against counterclaims only as far as your counterclaims are undisputed or upheld in a non-appealable judgement.

10.3 If you are in default vis-à-vis ourselves, we will be entitled to defer performance of our own contractual obligations until we have received the overdue payments; in particular, we will be entitled to retain all or part of the delivered items.

10.4 We will charge interest at 5 percent points per annum above the prevailing European Central Bank base rate for failure to observe agreed payment dates.

10.5 If you default on due payments and fail to make payment even after a grace period has been set, or if you are otherwise in serious breach of contract, we shall be entitled to rescind the contract and demand compensation.

You will then be obliged to return the delivered items to us immediately at our request, free of charge to ourselves and at your risk.

11. Retention of title

11.1 Any items to be delivered and any delivered items will remain our property until the purchase price and additional costs have been paid in full.

11.2 While the delivered items are subject to retention of title, you must not sell, hire, lease, lend, relocate or pledge them, nor must you transfer ownership for surety or other purposes or otherwise dispose of them to third parties.

You will assist us in measures to safeguard and, where appropriate, assert our right to retention of title. You will inform us immediately if third parties assert rights to items to be delivered or delivered items or dispose of it.

11.3 For the duration of our retention of title, we shall be entitled to insure the items to be delivered or the delivered items at your expense against theft, breakage, transit, fire, water or other damage, unless you can provide evidence that you have taken out insurance yourselves.

11.4 If you default on payment or are otherwise in serious breach of contract, we shall be entitled to take the delivered items back. If we take the delivered items back and/or seize it, this will not constitute rescission of the contract.

11.5 The transfer of title will not affect the passage of risk provisions in Clause 5.

12. Force majeure

12.1 Either Party will be entitled to refuse to fulfill its contractual obligations where and for as long as this is prevented or is not economically viable as a result of the following circumstances: strikes, lockouts, and other circumstances beyond the Parties' control such as natural disasters, fire, earthquake, war (declared or undeclared), mobilization, revolt, seizure, distraint, embargo, energy supply restrictions, and defects and delays among sub-suppliers for one of these reasons.

12.2 A circumstance referred to in this Clause and occurring prior to conclusion of the contract will entitle either Party to refuse to perform the contract only if the circumstance has proven repercussions for performance which were not foreseeable at the time the contract was concluded.

12.3 The Party wishing to invoke force majeure will inform the other Party immediately of the start and end of such circumstances.

12.4 If you are hindered by force majeure from performing the contract, you will indemnify us for the costs we have incurred in protecting the ordered item.

12.5 Each Party will have the right to rescind the contract in writing if performance of the contract is prevented for more than six months as a result of force majeure under this Clause.

13. Court of arbitration, applicable law

13.1 Any disputes arising out of and in connection with our contractual relationship will be subject to the rules of arbitration and conciliation of the International Chamber of Commerce and to a final decision by one or more arbitrators appointed in accordance with the said rules.

The court of Arbitration will be in Zurich, Switzerland.

13.2 The contract will be subject to Swiss law, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

E.C.H. Will GmbH, Hamburg, September 2004