

# GENERAL TERMS AND CONDITIONS OF SALES AND DELIVERY of PRIMES GmbH Metrology for Production and Laser Radiation (As at: 15 October 2018)

## I. General, Area of Application

- (1) These General Terms and Conditions of Sales and Delivery shall apply to all of our business relationships with our clients. The General Terms and Conditions of Sales and Delivery shall apply only if the client is an entrepreneur (Article 14 of the German Civil Code), a legal entity under public law or special fund under public law.
- (2) The General Terms and Conditions of Sales and Delivery shall apply in their respective version as a general agreement for future contracts with the same client without having to refer to them again in every individual case; in this case we will inform the client of amendments to our General Terms and Conditions of Sales and Delivery without undue delay.
- (3) Our Terms and Conditions of Sales and Delivery shall apply exclusively; client conditions that conflict with or deviate from our Terms and Conditions of Sales and Delivery shall not be recognized unless their validity is explicitly agreed in writing. Any conflicting conditions of the client are hereby explicitly rejected. Our Terms and Conditions of Sales and Delivery shall also apply if we make the delivery to the client without reservation in the knowledge of client conditions that conflict with or deviate from our Terms and Conditions of Sales and Delivery.
- (4) Individual agreement with the client made in specific cases (including collateral agreements, supplements and amendments) shall always have precedence over these Terms and Conditions of Sales and Delivery. A written agreement or our written confirmation shall be decisive for the content of such agreements.
- (5) Legally relevant declaration and notifications, which are to be submitted to us by the Client after conclusion of the agreement (e.g. setting of deadlines, notifications of defects, declarations on rescission or reduction) must be made in writing to take effect.
- (6) References to the validity of statutory provisions are for the purpose of clarification only. Even without such a clarification, the statutory provisions therefore apply provided that they are not directly modified or explicitly excluded in these Terms and Conditions of Sales and Delivery.

## II. Conclusion and Content of the Purchase Contract

- (1) Our offers are without obligation and not binding.
- (2) A client order of goods shall be deemed to be a binding contract offer. Unless otherwise stipulated in the order, we shall be entitled to accept this contract offer within 10 days of receipt by us.
- (3) All details concerning weight, content and dimensions are average values. If no specific values have been agreed or are not mandatory, customary deviations shall be permitted.

## III. Delivery Dates and Time Limits

- (1) Delivery time information is not binding (in particular, it does not justify delayed payment if it is exceeded), unless a specific delivery date is explicitly agreed in writing to be binding. A binding delivery deadline has been met if, by the end of it:
  - a) in the case of client collection, the goods are ready for collection by the client at the place of performance  
or
  - b) in the case of shipping the goods to a location other than the place of performance, the goods have been handed over to a transport party and have left our plant/warehouse.
- (2) Late delivery shall be determined by the statutory provisions. In this case, a warning by the client is required.
- (3) Force majeure events and other circumstances outside our responsibility that make execution according to the deadline impossible shall exempt us for the duration of these events from the delivery and service obligations undertaken. This is especially the case if there are shortages of energy and raw materials, in industrial disputes, government orders, disruptions to traffic or operations or if subcontractors do not deliver on time or correctly due to force majeure events or for the other reasons mentioned above. We shall inform the client of the delivery delays immediately. If such a disruption lasts longer than six months, the client shall be entitled to withdraw from the contract subject to statutory requirements.
- (4) Deliveries that are not made within the time limit states in our order confirmation are permissible provided that this does not conflict with any discernible interest of the client.
- (5) If delivery on call (whole or part delivery) has been agreed by the client without a specific time limit, we may withdraw from the contract after an appropriate time limit for calling to be set by the client has expired without success, at the latest within six months of concluding the contract, and/or we may demand compensation due to non-fulfillment. If a call deadline has been agreed in the contract, we shall be entitled to the same rights after the client has been set an appropriate grace period for the call. Our statutory rights shall remain unaffected by this.
- (6) The client is required to accept without undue delay goods supplied or delivered on time. Furthermore, he must lay the necessary foundations on his part in plenty of time for processing the order on time. If goods ready for delivery remain at his disposal at the request of the client, the invoice can be issued immediately and payment can be requested. Apart from that, the provisions of Articles 243 para. 2, 300 para. 2 of the German Civil Code apply.

## IV. Packaging, Shipping, Transfer of Risk

- (1) Unless otherwise agreed, delivery will be FCA (INCOTERMS 2010) **Max-Planck-Straße 2, 64319 Pfungstadt**.
- (2) At the client's request and expense, the goods will be sent to a different destination (sales shipment). Unless otherwise agreed, we are entitled to determine the method of shipping ourselves (in particular, transport company, shipping route, packaging). The goods will be insured against transport damage and other risks only at the client's explicit wish and expense.
- (3) If the client is in default of acceptance, has failed to perform his obligation to cooperate or is our delivery is delayed for other reasons for which the client is responsible, we shall be entitled to demand compensation for the resulting damages, including additional expenses (e.g. warehouse costs).

## V. Prices, Payment Terms

- (1) Unless otherwise agree, the sales prices are net prices in EURO plus value added tax at the statutory level, duties and other levies. If no specific price has been agreed, our price list shall apply in the version valid at the time of conclusion of the contract.
- (2) If the delivery is to take place later than four months after conclusion of the purchase contract, we shall be entitled to demand negotiations with the client on a price adjustment without undue delay if we incur considerable cost increases for raw materials, energy, wages or freight. If agreement is not reached within six weeks, each party may withdraw from the part of the contract not yet completed by delivery.
- (3) Payments shall only be deemed as fulfillment when they are made to the accounts indicated in the relevant invoices.
- (4) During the period of default, the client shall add interest at a rate of 9 percentage points over the base rate of the European Central Bank to the monetary debt. We reserve the right to prove, and assert, higher damages due to the default.
- (5) If one or more payment demands against the client is not yet due, we can make it immediately due by means of a unilateral declaration if, after conclusion of the contract, we become aware of at least one of the circumstances named below:
  - a) The client is yet again in default of payment to us for a considerable amount of money - possibly also with demands from other contractual relationships. An amount is considerable that is at least 10 % of the total of all our payment demands against the client that are due at the time of issuing the demand for payment in full that have not yet been paid.
  - b) The client has stopped his payments to us or third parties.
  - c) There is a legal reason for opening insolvency proceedings on the client's assets.
  - d) The client has applied to open insolvency proceedings on the client's assets.
  - e) Insolvency proceedings have been opened on the client's assets.
  - f) Other circumstances occur that are liable to greatly reduce the client's credit-worthiness.
- (6) Under the conditions of number V (5) we are also entitled to make all outstanding deliveries in return for advance payment or collateral security and, if this is not done by the client within an appropriate time frame, to withdraw from the contract and demand compensation due to non-fulfillment. The demand for compensation is excluded if the client is not responsible for the fact that he has not made an advance payment or collateral security within the set time frame. Other and further reaching statutory entitlements to compensation shall not be affected by this.

## VI. Offsetting, Retention

The client shall only be entitled to offsetting or retention if his counterclaims are determined with legal effect or recognized by us. Furthermore, he is authorized to exercise a right of retention only to the extent that his counterclaim is based on the same contractual relationship.

## VII. Retention of Title

- (1) All of the goods delivered to the client shall remain our property until complete payment of all of our current and future demands arising from the business relationship, irrespective of the legal reason. This shall also apply to the extent that the demands are posted in a current account.
- (2) A pledge or transfer of security of the reserved goods is not permitted for the client without our explicit agreement until full payment of the secured claims.
- (3) The client is entitled to sell on the reserved goods in normal business transactions, unless the client demand arising from the selling on has already been assigned to others: the entitlement to selling on shall not be applicable even if the conditions according to number V (5) pertain.
- (4) The client shall assign all demands from the selling on of the reserved goods against third parties to us in the amount of our claims without the need for a separate declaration of assignment in individual cases; we accept the assignment. Irrespective of the assignment and our collection right, the client shall be entitled to collect for as long as he meets his obligations to us and does not meet one of the conditions according to number V (5). If one of the above-mentioned conditions pertains, at our request, the client shall make the necessary disclosures on the assigned claims and inform the creditors of the assignment. We are then entitled to inform the third party creditors of the assignment of claims and to collect the claims ourselves or to take back the reserved goods.
- (5) If the reserved goods are associated or mixed with other things within the meaning of Articles 947, 948 of the German Civil Code, we shall acquire joint ownership of the resulting intermediate or end products in the ratio of the proportionate value of the reserved goods. If the client acquire sole ownership of the new thing when working or processing the reserved goods with other things according to Article 950 of the German Civil Code, the contracting partners agree that the client shall grant us joint ownership of the new thing in the ratio of the value of the reserved goods. In all cases, the client shall store the new thing for us free of charge. The rules for selling on according to para. (4) shall apply accordingly in the amount of the proportionate value of the reserved goods.
- (6) The client shall inform us without undue delay of enforcement measures by third parties with respect to the reserved goods or claims assigned in advance, handing over the documents required for an intervention.
- (7) We undertake to release the securities to which we are entitled pursuant to the above provisions at our discretion at the client's request and to the extent that their value exceeds the claims to be secured by at least 20 %.
- (8) The client is required to store the reserved goods appropriately and at his own expense in line with the standard handling at the client's premises and to insure them against theft, breakage, fire, water and other damage. The insurance claims shall be deemed to have been assigned to us in the amount of the value of the reserved goods.
- (9) If a reservation of title can be agreed for deliveries to foreign countries that does not have the same effect as in German law, but the reservation of other rights to the goods being delivered is permitted, we shall be entitled to these rights. The client shall cooperate in every respect in this matter.

## VIII. Guarantee

- (1) If the goods we deliver to the client have not been manufactured by us, but have been procured from a pre-supplier, we primarily meet our guarantee obligations by assigning all guarantee rights against our pre-supplier to the client. This assignment is accepted by the client.
- (2) If guarantee claims are not met by our pre-supplier, and in all other cases, we shall be liable for material defects if and to the extent that the statutory requirements are met or subject to the proviso of the paragraphs below.
- (3) The statutory provisions shall apply to the rights of the client in the event of material and legal defects (including incorrect and short delivery and incorrect assembly or deficient assembly manual), unless otherwise determined below. In all cases, the statutory special provisions for final delivery to a consumer shall remain unaffected (supplier recourse according to Articles 478, 479 of the German Civil Code).
- (4) If the properties of the goods have not been agreed, the statutory provisions must be applied to assess whether there is a defect or not (Article 434 para. 1 sentences 2 and 3 of the German Civil Code).
- (5) The client's deficiency claims presuppose that he has met his statutory duties of inspection and complaint (Articles 377, 381 of the German Commercial Code). If a fault is found in the inspection or later, we must be notified of it in writing without undue delay. If the client omits the correct inspection and/or fault notification, the goods delivered shall be deemed to have been approved.
- (6) If the delivered object is faulty, we can first of all choose whether we rectify the defect by remedying the default (repair) or by supplying a fault-free object (replacement delivery). Our right to refuse rectification under the statutory conditions remains unaffected.
- (7) The client must give us the necessary time and opportunity for due rectification, in particular to hand over the rejected goods for inspection purposes. In the case of replacement delivery, the client shall return the faulty object to us under the statutory provisions.
- (8) We shall be responsible for the expenses required for inspection and rectification, in particular transport, route, work and material costs (not: expansion and installation costs) if there really is a fault. However, if the client's demand for fault rectification proves to be unjustified, we can demand reimbursement of the resulting costs from the client. In all cases, the client shall be responsible for them himself if the expenses rise because the object delivered has subsequently been brought to a location other than the place of performance unless the transport corresponds to correct use.
- (9) In urgent cases, e.g. jeopardy to operational safety or to ward off disproportionate damage, the client shall be entitled to remedy the fault himself and demand compensation from us for the objectively necessary expenditure. We must be notified without undue delay, if possible in advance, of such self-repair. There shall be no right to self-repair if we would be entitled to refuse corresponding rectification according to the statutory provisions.
- (10) If rectification fails, an appropriate time limit for rectification to be set by the client expires without success, both types of rectification has been refused by us or rectification is unreasonable, the client may withdraw from the purchase contract, reduce the purchase price (cut the purchase price), demand compensation or reimbursement of the fruitless expenditure. However, there is no right to withdrawal in the case of minor faults. A fault is minor if only part of the delivery is affected that should be considered as minor in proportion to the delivery as a whole.
- (11) However, client claims for compensation or reimbursement of fruitless expenditure pertain only subject to the proviso of number IX and are otherwise excluded.
- (12) The client may withdraw from the contract or terminate it due to an infringement of an obligation that does not comprise a fault only if we are responsible for the infringement of the obligation. An unrestricted right to termination by the client shall be excluded.

## IX. Claims for Compensation

- (1) Insofar as these General Terms and Conditions of Sales and Delivery, including the provisions below, do not stipulate otherwise, we shall be liable according to the relevant statutory provisions in the event of an infringement of contractual and non-contractual obligations.
- (2) We shall be liable for compensation - irrespective of legal reason - in the case of intent and gross negligence. In the case of simple carelessness, we are liable only
  - a) for claims resulting from injuries to life, limb or health;
  - b) for claims resulting from violating a major contractual obligation (an obligation whose fulfillment actually makes correct implementation of the contract possible and on whose observation the contracting partner regularly depends and may depend); in this case, however, our liability is limited to reimbursement of the foreseeable, typical damage incurred;
  - c) for damage resulting from delay with performance where a fixed delivery date was contractually agreed;
  - d) if the liability results from mandatory and non-negotiable liability standard, such under the German Product Liability Act;
  - e) if we have assumed a guarantee for the properties of the goods or the procurement risk.
- (3) The regulation above shall also apply to an infringement of an obligation by our legal representatives, employees and vicarious agents. The above liability restrictions shall apply equally to the client's reimbursement claims. Such claims by the client are limited to the amount of the interest that this has in fulfilling the contract.

## X. Limitation

- (1) Deviating from Article 438 para. 1 No. 3 of the German Civil Code, the general limitation for claims arising from material and legal defects is one year from the transfer of risk.
- (2) However, if the goods is a building or something that has been used for a building in line with its usual use and has caused its defectiveness (building material), the limitation according to the statutory regulation is 5 years from delivery (Article 438 Abs. 1 No. 2 of the German Civil Code).
- (3) The cutting of the limitation does not apply to compensation claims according to number IX of these General Terms and Conditions of Sales and Delivery.
- (4) The statutory special regulations for the limitation for claims in rem for the restitution of third party property (Article 438 para. 1 No. 1 of the German Civil Code), in the case of deceit by the vendor (Article 438 para. 3 of the German Civil Code) and for claims in the case of supplier regress for final delivery to a consumer (Article 479 of the German Civil Code) shall remain unaffected by this.

## XI. Place of Jurisdiction, Applicable Law

- (1) Conclusion of the contract and the contractual relationships between us and the client are subject only to the law of the Federal Republic of Germany. Use of UN sales law is excluded.
- (2) The place of jurisdiction for any disputes arising from the contractual relationship is our business headquarters in Pfungstadt. However, we are also entitled to file suits at the client's headquarters.