

# General Terms of Delivery and Payment of Systraplan GmbH & Co. KG.

## § 1 Scope of Terms and Conditions

I. All deliveries, services and proposals shall be subject to the following General Terms and Conditions. In addition, the conditions of the VDMA shall apply to the extent they do not contradict the following terms.

The General Terms and Conditions shall apply to all future business transactions and relationships, even if they have not been repeatedly and explicitly agreed upon. The Terms and Conditions hereto shall be deemed as having been accepted no later than upon receipt of goods or services.

II. Deviating provisions from the Terms and Conditions hereto shall take effect only if they have been confirmed in writing.

## § 2 Offer and Closure of Contract

I. Our proposals and bids shall be without obligation and subject to confirmation. In order to be deemed valid, declarations of acceptance and all orders shall necessitate written or fax confirmation through Systraplan. The same shall apply for additions, amendments or subsidiary agreements.

II. Blueprints, illustrations, measurements, weights or other performance data shall be deemed as being valid only if these have been explicitly agreed upon in writing. Without being obliged to procure prior consent from the customer, we shall be entitled to undertake even substantial changes to the delivery items as long as they are in connection with technical improvements.

## § 3 Prices

Delivery prices are quoted ex works (EXW), excluding packaging, freight and other additional charges.

The prices quoted in our confirmation shall apply plus the currently applicable VAT value added tax. Additional shipments and services shall be invoiced separately.

## § 4 Lead Times for Deliveries and Services

I. Delivery dates and lead times specified by us shall be considered non-binding unless otherwise agreed upon in writing.

II. Even in the event of binding delivery dates or lead times, we shall not be held accountable for delays in delivery or service on the grounds of force majeure and/or circumstances which render delivery difficult or impossible. These circumstances include later difficulties in materials procurement, disruptions in operations, strike, lock-outs due to labour disputes, shortage of personnel, shortage of transportation means, government directives, etc., - including such disruptions that occur with and affect our suppliers or their subsequent suppliers.

These disruptions shall entitle us to delay the delivery or service by the duration of the disruption plus an appropriate start-up period or entitle us to completely or partially rescind the contract on the grounds of the unfulfilled part of the contract.

III. If the duration of the disruption is longer than three months, the customer shall be entitled – after an appropriate respite – to rescind the non-fulfilled portions of the contract.

IV. The customer's damage claims on the grounds of delay shall not apply, except in the case of intent or gross negligence on our part. Under no circumstances shall the customer be entitled to claim damage compensation on the grounds of breach of contract.

V. If the customer is in default of acceptance, we shall be entitled to store the goods hereto at his expense. In addition to the proven costs of storage, we shall be entitled to rescind the contract and to demand damage compensation for breach of contract. We reserve the right to claim compensation for further damages.

VI. We shall be entitled to partial service and deliveries at any time.

## § 5 Passage of Risk

The risk passes to the customer as soon as the goods have been committed to the person or persons executing the transport or at the moment the goods leave our premises for the purpose of shipment. If the shipment becomes impossible or is delayed for reasons beyond our control, the risk passes with the dispatch-ready notification.

## § 6 Warranty

I. Deficiencies shall be reported in writing immediately, at the latest within one week after receipt of the delivery.

Deficiencies, which in spite of most intensive inspection have remained undiscovered within this period of time, shall be reported to us upon discovery without delay and in writing.

II. If the goods to be delivered are deficient, or in the absence of warranted characteristics, we shall be entitled to repair or supply replacement at our discretion and under exclusion of further warranty claims by the customer. We shall be entitled to a minimum of two repair or delivery attempts within an appropriate time period.

III. If, after an appropriate time period, the repair or replacement delivery fails, the customer shall be entitled to demand price reduction.

IV. The commissioning of machines delivered by us shall be effected by us on principle. The cost of the commissioning shall be borne by the customer. In the case of faulty commissioning by third parties, warranty claims against us shall be excluded.

V. We reserve the right to inspect all deficiencies reported to us. If an inspection by us is not possible for reasons beyond our control, our warranty obligation shall be excluded. The cost of the inspection shall be borne by the customer if warranty rights against us do not exist.

VI. If the shipment, the erection or the commissioning is delayed at no fault of our own, warranty claims by the customer shall expire at the latest 12 (twelve) months after passage of risk. For essential goods sourced from third parties, our liability shall be limited to the assignment of warranty claims which we would be entitled to against the supplier of the third party goods.

## § 7 Limitation of Liability

Damage claims against us and our vicarious agents or assistants on the grounds of impossibility of performance, positive breach of claim, negligence at or after the time of contract closure or for illegal behaviour shall be ruled out provided it is not based on deliberate actions or gross negligence.

## § 8 Retention of Title

I. The goods hereto shall remain our property until full payment of all claims and auxiliary claims arising from the business relationship hereto. This shall especially apply to balance claims arising from current invoices as well as to the redemption

of bills of exchange or cheques submitted towards these claims. This shall also apply to the so-called cheque procedure.

In the case of current accounts, these shall serve as securities for our account balance claims.

II. The goods under retention of title shall be insured against fire and theft.

III. Inasmuch as the customer acquires ownership by processing, bonding and blending or because the delivered goods have become an essential component of a property or real estate, it shall be deemed as having been agreed upon that we shall acquire ownership or co-ownership of such new goods to the extent of the value of our processed or blended goods under retention of title. In this case, the customer shall store the goods hereto free of charge if he is immediate possessor of the goods. If the goods hereto are possessed by a third party, the customer shall hereby assign to us any claims he may direct against the possessor of the goods, especially claims pertaining to replevin. We hereby accept the assignment. We shall be entitled to recover or have the goods hereto recovered from the possession of the customer and to enter the premises of the customer or the possessor of the goods for this purpose.

If our ownership of the goods hereto shall expire for legal reasons for the benefit of a third party, and if this third party is not the customer, the customer shall be liable for having the third party securing our rights.

IV. Contrary to § 951 BGB (German Civil Code), we shall be entitled to redeem the goods hereto which have been installed.

V. If the customer sells the goods – regardless of their state – delivered by us, the customer shall hereby assign to us all claims against the third party arising from the sale including all ancillary rights. We hereby accept the assignment. At our request, the customer shall be obliged to inform his customer of this assignment and to make available to us all documents necessary to assert our rights against the third party buyer. The assignment shall serve the securing of the value of the sold goods still subject to retention of title.

VI. Pledging of securities and chattel mortgages shall be ruled out. We shall be notified immediately of any garnishment or similar detractions.

VII. If the customer sells the goods hereto on credit, the customer shall secure retention of title in accordance with this clause.

VIII. We shall reserve the right to assign our receivables due from the customer or his buyer, even if this is in contradiction to the customer's terms and conditions of purchase.

IX. The customer shall be obliged to inform us without delay of impending defaults of payment, whether the potential default concerns the customer himself or his buyers and in case this default would endanger our accounts receivable.

## § 9 Payment and Securities and Bonds

I. If nothing to the contrary has been agreed upon, our invoices shall be payable net cash. We shall be entitled, even if this is contrary to the customer's purchasing terms, to apply payments first to the customer's older debts. If costs and interests have accrued, we shall be entitled to apply payments first towards the costs, then towards the interest, and lastly towards the main principle.

II. Payment shall be deemed as having been effected when we are able to dispose of the funds. In the case of cheques or bills of exchange, the payment shall be deemed as having been effected when the cheque has been cashed and not been subsequently reverse debited and when the bill of exchange has been cashed. Discount interest and bill charges are at the expense of the customer and shall be reimbursed to us immediately.

III. The payment by the customer defaults 14 days after the due date without further reminder. If the customer defaults, we shall be entitled to charge interest from the due date onward to the amount business banks charge their customers for open lines of credit. We shall reserve the right to claim further damages.

IV. If the customer defaults on his payment obligations, especially if a cheque or bill of exchange is not cashed or if the customer ceases payments or if other circumstances become known which question the creditworthiness of the customer, we shall be entitled to declare the balance due immediately even if cheques or bills of exchange have been accepted. In addition, we shall also be entitled to demand pre-payment or collateral and to refuse delivery of the goods.

V. Our employees are authorized to collect funds only pending authorization in writing.

VI. Even if the customer has submitted counterclaims or has issued a notice of deficiency, the customer shall be entitled to summation, retention or reduction only if counterclaims are sentential and are undisputed.

## § 10 Documents

Sales documents such as catalogues, sample folders, illustrations, blueprints, drafts, etc. made available to you shall remain our property and shall be made available to third parties only with our consent. These documents are under copyright and shall be returned to us immediately upon demand.

## § 11 Applicable Law, Place of Jurisdiction, Partial Invalidity

I. The commercial terms and conditions hereto and the entire legal relationship between the customer and ourselves shall be governed by the laws of the Federal Republic of Germany.

II. Place of fulfillment for delivery and payment shall be Herford as long as the customer is a commercially registered merchant or a public incorporation. Under the same conditions, all direct or indirect disputes arising from the business relationship shall be settled with our choice of either the district court in Herford or the provincial court in Bielefeld.

This shall also apply to foreign or overseas customers.

III. If a provision of the commercial terms and conditions hereto or a provision within the general framework of another agreement should now be or in the future become invalid, the validity of all other provisions or agreements shall remain unimpaired.