

# General Terms and Conditions of Sale and Delivery of esmo AG

---

## A General Information, Scope of Application

- 1 Present *General Terms and Conditions of Sale and Delivery of esmo AG* shall also apply without any future reference or agreement for any and all – including any prospective – business relations of esmo AG (hereinafter referred to as "esmo", "we" and/or "us") with our customers regarding the purchase of our goods by the customer, if the customer is an entrepreneur (section 310, subsection 1 in conjunction with section 14 of the German Civil Code), or a legal entity under public law, or a separate estate under public law, insofar as such business transactions do not relate to the provision of services. These General Terms and Conditions of Sale and Delivery shall apply even if they are not separately and expressly agreed again. Any deviating general terms and conditions of the customer shall not become subject of our business relationship with the customer despite the fact that we may not respond or render our services without any express objection. Present General Terms and Conditions of Sale and Delivery shall not apply to consumers (section 13 of the German Civil Code).
- 2 These General Terms and Conditions of Sale and Delivery shall apply –
  - to all contracts relating to the sale and delivery of moveable items – hereinafter referred to as "goods" –, irrespective of whether we manufacture these goods ourselves, or purchase them from other suppliers (sections 433 and 651 of the German Civil Code) [as stipulated in section B herein];
  - to the performance/provision of installation services [as stipulated in section C herein].

The provision of software in connection with the sale and delivery of moveable goods is governed separately by our *General Terms and Conditions for the Provision of Software*. We shall only render consulting or work performances to the customer if we expressly agree this in writing within the framework of a separate contract. In this case, the provisions agreed between the customer and us shall apply. Insofar as we have agreed with the customer to provide consulting services, this shall be conducted within the framework of a separate contract, concluded in addition to other contracts, e.g. the supply contract. Within the scope of the consulting contract, we shall commit to perform an assignment/operation, not a success. In case we render the consulting services against remuneration, the provisions of business management and service contract law (section 675 and section 611 of the German Civil Code) shall apply.

- 3 If we provide services (in particular repairs which are not provided on the basis of customer warranty claims, maintenance services, training, and remote maintenance services) with and without prior purchase of the goods by the customer, our *General Service Conditions* shall apply.
- 4 Any legally relevant statements and notifications to be made to us by the customer (e.g. acceptance of the contract, setting of deadlines, notification of defects, declaration of withdrawal or reduction) shall require written form in order to be effective.

## B Contracts for the Sale and Delivery of Moveable Items

### 1 Conclusion of the Contract

- 1.1 Our offers/quotations are subject to confirmation and non-binding, unless they have been expressly marked as binding or contain a particular acceptance period. The acceptance of our non-binding offer shall be effected by our written order confirmation, which determines the scope of our obligation to perform. Insofar as the customer does not accept our binding offer without any modification, a contract shall only be concluded at the time of our written acceptance. Any verbal ancillary agreements made prior to the conclusion of the contract shall become null and void upon the conclusion of the contract, unless it emerges from them that they shall continue to be binding henceforth.
- 1.2 The customer's purchase order for the goods shall be deemed a legally binding contract offer. Unless otherwise stated in the purchase order, we shall be entitled to accept such offer of a contract within two (2) weeks upon receipt. Acceptance shall be made on the basis of present General Terms and Conditions.
- 1.3 Any information contained in the quotation and contract documents, technical documentations, brochures, catalogues, or any other product descriptions or documents – also in electronic form – relating to goods (e.g. dimensions, measurements, weights, cycle times, illustrations, and descriptions) are approximate, and do not any constitute contractual properties/specifications unless they have expressly been marked as binding, or unless the usability for the

contractually intended purpose requires such precise conformity. Any deviations customary in the trade and/or arising from legal regulations and/or technical improvements shall be permissible provided that they do not impair the usability for the contractually intended purpose. We shall only assume guarantee if expressly specified as such by us prior to conclusion of the contract.

- 1.4 The customer has obtained information on the goods, their essential properties and the requirements of the customer. The customer shall assume the risk that the ordered goods meet the customer's requirements and, if necessary, shall seek expert advice.

## 2 Period of Delivery, Default in Delivery

- 2.1 Our proposed deadlines as well as dates for deliveries and services shall only be deemed approximate, unless a fixed deadline or date has been expressly confirmed or agreed. If shipment has been agreed, any delivery periods and delivery dates shall refer to the time at which the goods will be handed over to the respective third party commissioned with the transport and, in the case of a specified duration, shall commence upon dispatch of the order confirmation.
- 2.2 Insofar as modifications are made to the goods after the conclusion of the contract, and an agreement to this effect has been reached between us and the customer, the delivery period shall be extended accordingly by the time period required for the implementation of the modification agreed with the customer.
- 2.3 A prerequisite for compliance with agreed and binding delivery dates and deadlines shall be that the customer provides us with all required information and documents in a timely manner, fulfils any other obligations to cooperate incumbent upon her/him, and does not default on essential contractual obligations (in particular payment). In case the customer is in default of acceptance, fails to cooperate, or delays our delivery for other reasons within the customer's area of responsibility, we shall be entitled to claim compensation for the resulting damage, including additional expenses (e.g. storage costs). Any other statutory claims we may have (e.g. our right to terminate the contract) shall remain unaffected thereby.
- 2.4 If prepayment before delivery or partial payment has been agreed between the customer and us, the delivery periods shall be extended accordingly pending payment of due claims by the customer. Unless a specific period for the provision of cooperation services has been agreed, an extension of the corresponding delivery period shall commence with our request for cooperation. Irrespective of our other rights, we may demand from the customer an extension of delivery and performance periods, or a deferral of delivery and performance dates by the period within which the customer does not fulfil her/his obligations towards us. We shall not be deemed to be in default if a delayed delivery occurs outside the Federal Republic of Germany due to obstacles caused by German, U.S. American, or any other applicable national, EU, or international regulations of foreign trade law, by embargos or other sanctions, or due to any other circumstances beyond our control. We shall inform the customer immediately of the beginning and end of such circumstances.
- 2.5 In case we are unable to comply with our contractual obligations or are unable to comply with them in due time, as a result of force majeure occurring after conclusion of the contract (e.g. direct or indirect consequences of fire, natural disasters, acts, restrictions, or omissions attributable to domestic or foreign government authorities, strikes, industrial disputes, general material shortages on the market, unrest, transport delays), or any other events occurring after conclusion of the contract beyond our control – without any fault on our part – the delivery periods shall be extended accordingly. The foregoing shall also apply if such circumstances affect our sub-suppliers, and also if such circumstances occur during an already existing delay on our part. If the customer cannot reasonably be expected to accept the delivery or service as a result of the delay, she/he shall be entitled to withdraw from the contract with us by immediate notification, which shall require text form to become effective. Insofar as such events render delivery or performance significantly more difficult or impossible for us, and the impediment is not only of a temporary nature, we shall be entitled to withdraw from the contract.
- 2.6 The prerequisites for default in delivery shall be governed by applicable statutory provisions, whereby in any event, however, a reminder issued by the customer has to precede. Insofar as the delivery dates or delivery periods are extended in accordance with subsections 2.3 to 2.5 herein, or insofar as we are exempt from performance pursuant to section 326 of the German Civil Code, any claims for damages on the part of the customer shall be excluded. Our right to claim damages for non-performance by the customer or any further claims shall remain unaffected thereby.
- 2.7 We shall be entitled to make partial deliveries, unless the customer has no interest therein, and the agreed delivery period has been exceeded. Any complaints regarding partial deliveries shall not entitle the customer to refuse the remaining delivery.

- 2.8 The customer's rights, as set forth in section 7 of present General Terms and Conditions, and our statutory rights shall remain unaffected, particularly in cases where the obligation to perform is excluded (e.g. due to impossibility, or unreasonableness of performance, or subsequent performance).
- 2.9 In the event that we are in default of delivery, the customer shall be entitled to grant us a reasonable grace period to effect performance. Such period shall be deemed unreasonable unless it amounts to at least two (2) weeks. If this period expires to no avail, the customer shall be entitled to withdraw from the contract. If we have already effected partial deliveries, the customer shall not be entitled to withdraw from the entire contract unless the customer has no reasonable interest in the partial deliveries already made.

### 3 Delivery and Transfer of Risk

- 3.1 Unless otherwise agreed, delivery shall be effected EXW (INCOTERMS 2020) at our registered office in Rosenheim, Germany. At the customer's request and expense, we will ship the goods to another destination (purchase to destination). Unless otherwise agreed, we shall be entitled to determine the type of transport (in particular, forwarder, dispatch route, packaging) ourselves at our prudent discretion. The goods shall only be insured by separate agreement with and at the expense of the customer. Insofar as delivery is not made on Euro pallets, which shall be returned to us at the customer's expense, transport packaging shall become the property of the customer. The customer shall be responsible for disposal in accordance with the provisions of the Packaging Act. Unless the Euro pallets are returned to us within three (3) months of dispatch to the customer, we shall be entitled to invoice the customer separately for the costs of these Euro pallets basing on the new-for-old principle. In case the customer transfers the goods to another place after delivery, she/he shall be responsible for compliance with any applicable export regulations, in particular those of the Federal Republic of Germany, the EU, and the USA.
- 3.2 The risks of accidental loss and accidental deterioration of the goods shall pass to the customer no later than at the time of handover/transfer – in case of purchases to destination, however, this risk shall pass to the customer already at the time of the transfer/loading of the goods to the third party commissioned with the transport. This shall also apply if partial deliveries are made, or if we have taken over any other services (e.g. dispatch or installation). For an agreed acceptance, the regulations stipulated between the customer and us shall apply. The handover shall be deemed to have been effected if the customer is in default of acceptance.
- 3.3 If dispatch or handover is delayed due to circumstances the customer is responsible for, or in case of the customer's default of acceptance, the risk of accidental loss shall pass to the customer effective the day on which the goods are ready for dispatch, and we have notified the customer accordingly.

### 4 Prices, Terms of Payment

- 4.1 The prices quoted in the order confirmation apply EXW (INCOTERMS 2020) at our registered office in Rosenheim, Germany – they are net prices, and thus do not include the legally applicable value-added tax. Payments shall be made free payment office in Rosenheim, Germany.
- 4.2 In the event that any cost component changes within the total costs (e.g. personnel costs or third-party-related material costs), we shall be entitled to adjust the price proportionately, and in proportion to the respective cost component upon expiration of four (4) months as of the date of contract conclusion. The same shall apply in the event that an individual contract is based on our price list, and delivery takes longer than four (4) months subsequent to the date of contract conclusion. The new price shall apply effective the date of receipt of the written notification regarding the price adjustment.
- 4.3 The customer shall bear the transport costs of the goods ex warehouse as well as any costs of transport insurance she/he may have requested. Any customs duties, fees, taxes, and other public charges shall be borne by the customer as well.
- 4.4 Insofar as we have agreed to perform supplementary services – e.g. installation, assembly, connection, functional tests, commissioning, test operation and/or staff training – along with the delivery of the goods, the customer shall bear the costs of these extra services (in particular labour costs at customary hourly rates, based on the extent of work and expenditure involved as well as travel expenses) in addition to the contract price of the goods. Furthermore, our *General Service Conditions* shall apply.
- 4.5 In case of partial payments, we shall be entitled to claim immediate payment of the entire purchase price if the customer is in arrears with two (2) or more consecutive instalments, and the amount in arrears amounts to more than ten (10) percent of the purchase price.

- 4.6 Unless otherwise agreed, any monetary claims shall be due upon invoicing, and payable within thirty (30) days of receipt of invoice.
- 4.7 Upon expiration of the payment deadline the customer shall be deemed to be in default. During default, our monetary claim shall be subject to default interest at the applicable statutory default interest rate. We shall reserve the right to assert further claims for loss caused by default.
- 4.8 The customer shall only be entitled to set-off insofar as her/his counterclaim has been legally established, has been acknowledged by us, or – in the case of retention – is in reasonable proportion to the defect as well as the anticipated costs of rectification. Counterclaims shall only be admissible if they pertain to the same contractual relationship.
- 4.9 If, upon conclusion of the contract, it becomes evident that our payment claim is at risk owing to the customer's inability to pay, we shall be legally entitled – pursuant to applicable statutory provisions – to refuse performance and, after having set a deadline, if required – to withdraw from the contract (section 321 of the German Civil Code). In respect of contracts concerning the manufacture of non-fungible goods (custom-made items), we shall be entitled to declare withdrawal immediately; any statutory provisions on the dispensability of setting deadlines shall remain unaffected thereby.
- 4.10 Without our prior written consent, the customer shall not be entitled to assign his claims against us, or have them collected by third parties – section 354 a) of the German Commercial Code shall remain unaffected thereby.
- 4.11 If the customer is obligated to make payment to us from several debt relationships, and if a payment made by him is not sufficient for the repayment of all payment obligations, we shall be entitled to first set off against his older debts. The customer shall be informed of the type of settlement made. If the customer has to pay interest and costs in addition to the principal claim, we shall be entitled to first set off against the costs, then against the interest, and finally against the principal claim any payment not sufficient to settle the entire debt.

## 5 Retention of Title

- 5.1 We shall retain title to the delivered goods (retention of title) pending full payment of all claims, for whatever legal reason, arising from the contracts concluded with the customer and an ongoing business relationship (secured claims). The retention of title shall furthermore apply to any claims arising from earlier and future legal transactions, and to balance claims arising from any existing current account relationship.
- 5.2 Prior to full payment of the secured claims, the goods subject to retention of title may neither be pledged to third parties nor transferred by way of security. The customer shall notify us in writing without any delay if and to which extent third parties access the goods belonging to us. The customer shall furthermore notify us without delay of any change of ownership of the goods as well as of any change of the customer's registered office, unless a case as set forth in subsection 5.4 hereto has occurred.
- 5.3 If the customer acts in breach of contract, in particular in the event of non-payment of our claims, we shall be entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand the return of the goods on the basis of retention of title. The demand for surrender shall only include a declaration of withdrawal from the contract if we expressly declare this in our demand for surrender; we shall rather be entitled only to demand surrender of the goods, and reserve the right to withdraw from the contract. If the customer does not pay the purchase price due, we may only assert these rights if we have previously set the customer a reasonable deadline for payment to no avail, unless such deadline may be dispensed with under the statutory provisions.
- 5.4 The goods under retention of title may be re-sold and/or processed by the customer in the course of her/his regular business operations. In such case, the following provisions shall additionally apply:
  - a) Retention of title shall extend to the products, at their full value, resulting from any processing, mixing, or combining of our goods, in which case we shall be deemed to be the manufacturer. If any third-party rights of title remain in effect, following any processing, mixing, or combining of/with third-party goods, we shall acquire joint title in proportion to the invoiced values of the goods processed, mixed, or combined. Moreover, any terms applicable to goods delivered under/subject to retention of title shall in the same way apply to the resulting product.
  - b) The customer hereby assigns to us as collateral, in total or in the amount of our possible co-ownership share pursuant to the preceding paragraph a), any claims against third parties arising from the resale of the goods or the product. We hereby accept this aforementioned assignment. The customer's duties, as outlined in subsection 5.2 herein, shall also apply in consideration of any assigned claims.

- c) Along with us, the customer shall remain authorized to collect the claim. We hereby commit not to collect the claim as long as the customer meets her/his payment obligation to us, as long as she/he does not default on payment, as long as no application for the institution of insolvency proceedings has been filed, and the customer is not otherwise unable to perform. However, if this is the case, we may demand the customer to inform us of any assigned claims and the respective debtors, provide us with all information required for collecting the claims, submit to us all relevant documents, and notify the debtors (third parties) of this assignment.
  - d) In case the realizable value of the collateral exceeds our claims by more than ten (10) percent, we shall, at the customer's request, release collateral at our option. The value of the secured claim shall be determined by the price we have invoiced to the customer (including legally applicable value-added tax).
- 5.5 In case the customer incorporates a claim assigned to us from a resale of the reserved goods into an existing current account relationship, the current account claim shall be assigned in full. After balancing, the agreed balance shall replace the assigned claim, which shall apply up to the amount of the original claim.
- 5.6 The customer shall undertake to handle the goods with care; in particular, the customer shall be obligated to sufficiently insure the goods at her/his own expense against fire, water, theft, and other damage at their replacement value, as long as the goods are subject to our retention of title, and to provide us with corresponding evidence upon request.
- 5.7 Insofar as present section 5 on the retention of title is invalid or non-enforceable in its entirety or in part due to legal or actual circumstances, the customer shall be committed, upon our request, to provide appropriate securities for the goods in a permissible and effective manner.

## 6 Customer Claims for Defects

- 6.1 Unless otherwise stipulated or agreed, the customer's rights in the event of defects in quality or defects of title shall be governed by applicable statutory provisions.
- 6.2 The customer shall bear the full burden of proof for the existence of the prerequisites for warranty claims. This includes in particular proof of a defect, its existence at the time of transfer of risk as well as its timely disclosure to us. If software is supplied, we shall not guarantee that the software is compatible with the respective data environment – specifically the hardware used by the customer as well as the software of third parties – unless we also supply this respective third-party software.
- 6.3 Insofar as the goods concerned do not constitute a work performance for which separate regulations agreed between the customer and us apply, the customer's claims for defects shall be subject to the condition that she/he has fulfilled her/his statutory obligations to inspect the goods and give notice of any non-conformities/defects (sections 377 and 381 of the German Commercial Code). If a defect becomes apparent in the course of the inspection or later, the customer shall be committed to notify us immediately in writing. Such notification shall be deemed immediate if it is issued within two (2) weeks, in which case the timely dispatch of the notification shall be deemed sufficient to meet the deadline. Irrespective of this obligation to inspect/examine and give notice of defects, the customer shall notify us in writing of obvious defects (including incorrect/short delivery) within two (2) weeks of delivery, whereby here as well the timely dispatch of the notification shall suffice to meet the deadline. In case the customer fails to properly inspect the goods and/or to adequately notify us of any defects, our liability for the respective defect(s) not disclosed to us shall be excluded.
- 6.4 If the delivered goods are defective, it shall be at our discretion to determine, within a reasonable period of time, whether we shall provide subsequent performance by remedying the defect (subsequent rectification) or by supplying a defect-free item (replacement delivery). Our right to refuse subsequent performance under the statutory conditions shall remain unaffected thereby.
- 6.5 In the event a third party asserts claims against the customer, based on the infringement of industrial property rights, know-how, or copyrights as a result of the goods delivered by us, and if the use of the goods is thereby impaired or prohibited, we shall, at our option and expense, either modify or replace the goods in such a way that they no longer violate the respective industrial property right, but nevertheless essentially comply with the agreed specifications, or indemnify the customer against any license fees for the use of the goods against the third party. However, if this is not possible for us under reasonable conditions, we shall take back the goods against reimbursement of the remuneration paid. For the use of the goods up to this particular point in time, we may demand adequate compensation from the customer.
- 6.6 The prerequisite for our liability pursuant to subsection 6.5 herein shall be that the customer immediately notifies us in writing of any third-party claims based on an infringement of industrial property rights, that the customer does not

acknowledge the alleged infringement, and that any dispute, including any extra-judicial proceedings, shall only be pursued with our consent. In case the customer discontinues the use of the goods for reasons of damage reduction or any other significant reasons, she/he shall be obligated to point out to the third party that the discontinuation of use will not constitute an acknowledgement of the alleged infringement of property rights.

- 6.7 Insofar as the customer her-/himself is responsible for the infringement of property rights, any claims against us pursuant to subsection 6.5 herein shall be excluded. The same shall apply insofar as the infringement of property rights is based on special specifications of the customer, through which an application not foreseeable by us, or through the goods being modified by the customer, or being used together with goods not delivered by us, will be caused.
- 6.8 We shall be entitled to make the subsequent performance owed dependent on the customer paying the respective remuneration due. Nevertheless, the customer shall be entitled to retain a proportion of the remuneration adequate to the defect.
- 6.9 The customer shall undertake to grant us both the time and opportunity required for the subsequent performance owed and, in particular, to hand over the rejected goods to us for inspection purposes or, insofar as this is not possible in view of the goods, to grant us access to the goods. In the event of a replacement delivery, the customer shall be obligated, in accordance with the statutory provisions, to return the defective item(s) to us which shall become our property.
- 6.10 In the event of a defect, we shall bear any expenses required for the purpose of inspection and subsequent performance, in particular transport, travel, labour, and material costs. If a customer's request for the remedy of a defect turns out to be unjustified, we shall be entitled to invoice the customer for any resulting costs on the basis of a time allowance according to the customer's currently valid price list, which the customer may obtain from us. Any additional costs, solely arising from the fact that the customer has moved the goods to a place other than the agreed place of delivery, or that the customer requests the defect to be remedied outside regular working hours, or by express dispatch of our staff, shall be borne by the customer even in the event of a defect.
- 6.11 The customer shall comply with any instructions and notices, contained in the operating instructions and user manuals supplied with the goods, during use and maintenance of the goods. Any non-compliance may result in the loss of warranty claims if the defect(s) is/are exclusively attributable to non-compliance.
- 6.12 In urgent cases, e.g. if operational safety is at risk and/or in order to prevent disproportionate damage, the customer shall be entitled to remedy the defect herself/himself, and to demand reimbursement from us for any expenditure objectively required for such purpose. We shall be notified in advance, without undue delay, of any such self-remedy measure, insofar as the customer may reasonably be expected to do so. The customer's right to perform self-remedy measures shall not apply if we are entitled to refuse subsequent performance pursuant to pertinent statutory provisions.
- 6.13 In the event that subsequent performance has failed twice, or a reasonable period to be determined/set by the customer for subsequent performance has expired unsuccessfully, or is dispensable pursuant to statutory provisions, the customer may withdraw from the contract, or reduce the price accordingly. In case of an insignificant defect, however, there shall be no right of withdrawal. Upon our request, the customer shall be obligated to state within an adequate period of time whether she/he intends to withdraw from the contract, or insists on the subsequent delivery of non-defective goods. The customer shall not be entitled to withdraw from the contract if the breach of contract is of minor extent, in particular with regard to only insignificant defects. The customer's right to claim damages instead of receiving performance, pursuant to pertinent statutory provisions and subsequent conditions, shall remain unaffected thereby.
- 6.14 Any claims of the customer arising from a guarantee given by us shall not affect the rights of the customer under present section 6.
- 6.15 Any claims of the customer for damages or reimbursement of futile expenses shall exclusively be governed by section 7 herein.

## 7 Liability

- 7.1 Our liability, unless otherwise provided by law, shall be limited to our coverage under our business liability insurance with the exception of damage –
- resulting from injury to life, body, or health, attributable to an intentional or negligent breach of duty, or any other intentional or grossly negligent conduct on our part or on the part of any of our legal representatives or vicarious agents;
  - arising from the absence or loss/expiration of a guarantee granted by us;

- resulting from intentional or grossly negligent breach of duty or otherwise on intentional or grossly negligent conduct on our part or on the part of any of our legal representatives or vicarious agents;
  - pursuant to the German Product Liability Act;
  - based on the fact that we fraudulently concealed a defect.
- 7.2 Unless otherwise agreed in subsection 7.1 herein, we shall be liable – limited to compensation for foreseeable loss/damage typical for this type of contract – for such loss/damage resulting from a simple or slightly negligent breach of essential duties/obligations (cardinal duties) on our part or on the part of any of our legal representatives or vicarious agents. Cardinal duties are defined as obligations, the fulfilment of which is essential for the proper performance of the contract, and on the observance of which the customer may rely.
- 7.3 Unless otherwise agreed in subsections 7.1 and 7.2 herein, our liability shall be excluded for any cases of slight negligence.
- 7.4 The objection of contributory negligence (as set forth in section 254 of the German Civil Code) shall remain unaffected thereby.
- 7.5 The provisions of present section 7 shall also apply mutatis mutandis for the benefit of any of our executive bodies, legal representatives, employees, and other vicarious agents, irrespective of whether contractual or statutory claims are concerned, and mutatis mutandis for any liability regarding the reimbursement of futile expenses as well.
- 7.6 The customer may only withdraw from or terminate the contract due to a breach of duty, not consisting of a defect, to the extent that we are responsible for this particular breach of duty. Any right of free termination on the part of the customer shall be excluded.

## 8 Limitation Periods

- 8.1 The general limitation period for any claims arising from material defects and defects of title shall be one (1) year as of the date of delivery or transfer. Any subsequent improvement of the goods shall not renew or extend the limitation period of the goods in its entirety, but rather only constitute a new limitation period of one (1) year for the parts installed/integrated within the scope of such subsequent improvement.
- 8.2 Any third-party claims for surrender in rem (section 438, subsection 1, number 1 of the German Civil Code) as well as any cases of fraud on our part (section 438, subsection 3 of the German Civil Code) shall be governed by the statutory limitation periods.
- 8.3 Subject to subsections 8.5 and 8.6 herein, the aforementioned limitation periods shall also apply to any contractual and non-contractual damage claims of the customer, based on a defect of the goods, unless the application of conventional statutory limitation periods (sections 195 and 199 of the German Civil Code) would result in a shorter limitation period in the individual case concerned.
- 8.4 The limitation periods as set forth in the German Product Liability Act shall remain unaffected thereby.
- 8.5 Any damage claims of the customer pursuant to present subsection 7 shall be exclusively governed by statutory limitation periods.

## 9 Ownership and Industrial Property Rights to Documents

- 9.1 We shall reserve any and all property rights, copyrights as well as industrial property rights to any documents such as catalogues, technical documentation (e.g. drawings, plans, calculations, cost estimates, references to DIN standards), or any other product descriptions made available to the customer, irrespective of whether such documents have been transmitted in writing or verbally, and irrespective of whether they have been transmitted electronically or physically. Our *General Terms and Conditions for the Provision of Software* shall apply to any provision/transfer of software.
- 9.2 Only with our express written consent may the documents referred to in present subsection 9.1 be reproduced/copied or made accessible to third parties, or in the event of the transfer of software, as set forth in and pursuant to our *General Terms and Conditions for the Provision of Software*. The customer may only use the documents for the contractually agreed purpose, and shall return them to us upon request, including any copies thereof, unless negotiations entail the conclusion of a contract, or if they are no longer required by the customer in her/his regular course of business.

## C Installation Services

### 1 Scope of Application

The following regulations shall supplement the provisions as set forth in sections A and B of present General Terms and Conditions of Sale and Delivery, governing any and all installation services provided by us in connection with a contract for the sale and/or delivery of moveable property.

### 2 Remuneration

Unless otherwise agreed with the customer in a separate contract, any installation services shall be remunerated on the basis of working time and material expenditure. We calculate the prices/charges for working and travel time, valid on the day of the service performance, including – if required – surcharges for any work performances under adverse/aggravating circumstances as well as for planning and supervising. Any ancillary expenses, in particular for overnight accommodation and travel of our personnel, shall be borne by the customer.

### 3 Involvement of Subcontractors

We shall be entitled to perform the installation services with our own personnel or have them performed by a subcontractor commissioned by us. The selection of the subcontractor shall be at our sole discretion, and does not affect our obligations towards the customer.

### 4 Customer's Obligation to Cooperate

#### 4.1 The customer shall at her/his own expense –

- designate a qualified staff member, prior to the commencement of the installation work who shall be available as a point of contact for the entire duration of the work performance,
- and, furthermore, take all measures required for the protection of persons and property at the installation site, in particular, instruct our personnel on any applicable safety regulations, insofar as these will be relevant for the protection of our personnel or property. This shall also apply to any operating instructions and warning notices for third-party devices which are either part of our installation services or may be affected by the setup/installation operations.

#### 4.2 Technical Support/Assistance of the Customer

4.2.1 The customer shall commit to provide technical support/assistance at her/his own expense, in particular, in order to –

- a) provide any appropriate auxiliary personnel in the number and for the time required to conduct the respective work performance – we shall not assume any liability for auxiliary personnel though;
- b) undertake all earthwork, building, bedding, and scaffolding work required, including the procurement and provision of all necessary building materials;
- c) provide all necessary equipment and heavy tools (e.g. lifting devices, compressors, etc.) as well as all supplies, materials, and appliances required (e.g. construction wood, wedges, supports, dowels, cement, plaster, sealant, etc.);
- d) provide heating, lighting, operating power, water, including all required connections;
- e) provide adequate, dry, and lockable rooms for the storage of our personnel's tools and equipment as well as to allocate parking spaces on the premises, located as closely as possible to the installation object;
- f) transport the parts/components to be installed on site, to protect the installation site and all materials against any harmful effect and influences as well as to clean the working area;
- g) provide adequate, theft-proof common/break rooms and offices/work rooms (with heating, lighting, washing, and sanitary facilities) as well as first aid precautions/material for our personnel;
- h) provide all materials and to perform all measures/operations required for the adjustment of the object to be installed, and in order to perform subsequent, contractually scheduled testing – this comprises appropriate communication facilities and an internet access in the immediate vicinity of the installation object.

4.2.2 The customer's technical assistance shall ensure that the installation may commence immediately upon arrival of our personnel, and be carried out without any delay.

4.2.3 In the event the customer does not comply with her/his obligations, we shall be entitled, yet not obligated, to perform the actions incumbent on the customer in her/his place and at her/his expense after specifying a deadline. This shall not apply, however, if the customer is not responsible for the non-performance of the service within the stipulated time period.

## 5 Acceptance

5.1 If we provide a work performance, this shall require a separate agreement between the customer and us. Where this is the case and subject to deviating provisions in such an individual contract, the customer shall be obligated to accept the work without undue delay, provided that the work does not show any substantial defects which would more than insignificantly impair its fitness for use. Acceptance may not be refused on the grounds of insignificant defects. We may set a reasonable deadline for the issuance/provision of the declaration of acceptance, upon the expiration of which the respective work performance shall be deemed accepted.

5.2 As set forth in subsection 5.1 hereinabove, the customer shall be obligated, upon our request, to accept a partial delivery. Any commissioning of the performance object manufactured by us or its use shall at any time be deemed to constitute acceptance of the work unless expressly agreed otherwise with the customer (e.g. performance of a trial run).

## D General and Final Provisions

- 1 Present General Terms and Conditions of Sale and Delivery as well as any and all legal relations between us and the customer shall be governed exclusively by the laws of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods.
- 2 If we provide present General Terms and Conditions of Sale and Delivery to our customers in German and/or English, the German language version shall be deemed authoritative in the event of any deviations/discrepancies.
- 3 Unless otherwise stated in our order confirmation, the place of performance for delivery and payment shall be Rosenheim, Germany.
- 4 The exclusive – as well as international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship with merchants, legal entities under public law, special funds under public law and/or customers, who do not hold a general place of jurisdiction in the Federal Republic of Germany, shall be Traunstein, Germany. We shall, however, also be entitled to take legal action at the customer's general place of jurisdiction.