

GTBS

TERMS OF SALE AND DELIVERY – valid as of 01/03/2015

§ 1 VALIDITY

Our Terms of Sale and Delivery apply, insofar as not determined otherwise and in writing, for all quotes, contracts of sale, orders, deliveries and services provided by Scharfenberger to the customer. They also apply for future business relations. Any different General Terms of Business of the customer will not be acknowledged even if they are not expressly contradicted.

§ 2 QUOTES AND CONCLUSION OF CONTRACT

(1) Our quotes are non-binding unless expressly defined as binding in the quote text. The contract does not come into force until we have confirmed the order to the customer in writing.

(1a) Deliveries and services are listed finally in our order confirmation. Insofar as information is conveyed orally, this information is to be considered as approximate.

(2) We will only accept liability if a promise has been made expressly in the order confirmation or in our advertising.

(3) The documents such as illustrations and drawings as well as the information about weight, volume, energy requirements and performance capability provided in the course of contract negotiations are decisive; technical modifications or technical improvements or design modifications are permissible if these are reasonable for the customer.

(4) Specifications in plans and technical documents are only binding if we expressly guarantee them.

(5) The quote documents, drawings, descriptions, samples and cost estimates may not be passed on, published, reproduced or disclosed to third parties without our prior written consent. The documents must be returned on demand without making copies.

§ 3 PRICES

(1) Our deliveries are made at prices that have been published in the respective valid price lists or order confirmations. All prices apply ex-factory or for spare parts and consumables ex-subsidary or delivery warehouse without packing.

(2) Our prices apply ex-factory including loading at the factory unless agreed otherwise but excluding packing and unloading which will be charged separately. VAT will be listed separately in the invoice at the legal rate valid on the date of issue of the invoice.

(3) All quoted prices and data outside of the order confirmation are not binding and are subject to change by us at any time.

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(4) We reserve the right to raise the prices according to costs increases incurred due to supplier contracts, tariff agreements or material price increases for contracts with an agreed life of more than four months. If the increase amounts to more than 5% of the agreed purchase price, the customer is entitled to withdraw from the contract in accordance with § 313 par. 3 German Civil Code (BGB). Damage compensation claims by the customer are excluded for this event.

§ 4 TERM OF DELIVERY AND FORCE MAJEURE

(1) Terms of delivery that are not expressly stated in writing as binding are not binding. In case of non-binding or approximate terms of delivery (“about”, “approx.”, “if possible” etc.), we will do our best to meet them. We reserve the right to make deliveries only after expiry of the any revocation period to which the customer is entitled (for example in accordance with § 355 Par. 1 and 2 German Civil Code). Terms of delivery begin at the earliest after receipt of all documents necessary for determining the content of the order insofar as the customer is obliged to procure these by the agreement and after receipt of an agreed down payment. A term of delivery is met when the shipment is ready for shipment within the period and the customer has been informed thereof.

(2) Terms of delivery shall be extended by the duration of the disruption under circumstances for which we are not responsible and which have a significant influence on the production or delivery of the object, especially in the case of industrial disputes and other circumstances that affect us or our sub-suppliers (business disruptions through no fault of our/their own). If no adaptation of the agreement is possible despite all reasonable efforts due to business disruptions through no fault of our own, we shall be release from our delivery obligation.

(3) If, due to the aforementioned circumstances, the term of delivery is extended or we are released from our delivery obligation, the customer shall have no liability claims against us whatsoever. Nor will we be liable for business disruptions that are no fault of our own during a delay. We will notify the customer when such circumstances occur.

(4) We are entitled to partial deliveries and partial invoices before expiry of the terms of delivery.

(5) If shipment or delivery is of the object of delivery is delayed at the customer’s request or due to circumstances that originate from the area of risk and responsibility of the customer, the customer will be obliged to reimburse us the costs incurred by storage as well as the interest costs on the capital implemented for the object of delivery. This claim amounts to at least 0.5 % of the open invoice amount for every month beginning, starting one month after notification of readiness for shipment for goods stored by us; proof of less damage is possible. However, we are entitled, after setting and expiry of a reasonable extension, to use the object of delivery otherwise and to deliver the customer replacement within reasonable extension of term.

§ 5 DELIVERY OF SOFTWARE

If the object of delivery is sold together with an electronic device, we grant the customer a generally non-transferable right to use the appropriate software. The transfer is allowed exceptionally if the customer proves a justified interest in the transfer to a third party with surrender of his own right to use, e.g. in the case of sale of the complete machine. Otherwise the respectively valid general terms for permission to use our software apply. The fonts and programs required for operation of the object of delivery are regularly subject to copyright and protection rights and remain our property.

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§ 6 SCOPE OF SUPPLY, TRANSPORT AND TRANSFER OF RISK

- (1) The risk is transferred to the customer at the latest with handover of the object of delivery to the freight handler by the factory or point of shipment. If shipment is delayed by the customer's behaviour or due to a circumstance for which we are not responsible, the risk will be transferred to the customer with notification of the readiness for shipment.
- (2) We are entitled to take out transport insurance for the customer and to his account based on the general transport insurance conditions which covers the risk of transports of the goods included in the order from the factory to the agreed destination.
- (3) In the event of agreement of trade clauses, the Incoterms in the respective valid version apply. The scope of the delivery is specified in the order confirmation.

§ 7 PAYMENT AND DEFAULT

- (1) Unless agreed otherwise in the order confirmation or the invoice, payments are due immediately and within 8 days after delivery, readiness for shipment or issue of the invoice without deductions in cash, by cheque or by money transfer.
- (2) Payments are not considered paid until the day on which we have access to the invoice amount.
- (3) In case of default, interest will be charged to the legal amount but at least 8 % p.a. above the respective basic interest rate. If we can prove higher interest damage, we are entitled to enforce this.
- (4) The customer may only settle counter-demands against our demands or refuse or withhold his payments if the counter-demands have been recognized by us or are undisputed or are legally recognized. If these conditions do not apply, the customer is not entitled to refuse or withhold his payments or to set them off against his counter-demands.
- (5) In the case of payment by instalments we are entitled to demand immediate payment of the total remaining purchase price when the customer is behind with two or more consecutive instalments and the due sum amounts to more than 10% of the purchasing price.
- (6) The bank charges will be charged to the customer for overseas payments.
- (7) The supplier reserves the right to refuse cheques or bills of exchange. Acceptance is conditional on payment. Discount and bill of exchange charges will go to the account of the customer and are due immediately.
- (8) If circumstances should become known to the supplier which put the creditworthiness of the customer into question, especially if a customer cheque is not cashed or the customer ceases his payments, the supplier will be entitled to demand the total remaining debt even if he has accepted cheques. In this case the supplier will also be entitled to demand down payments or securities.
- (9) If the customer finally ceases payment and/or bankruptcy proceedings are opened on his assets or court or out of court settlement proceedings are applied for, the supplier is also entitled to withdraw from the unfulfilled part of the contract.

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§ 8 RESERVE OF TITLE

(1) We reserve the right of title to the object of delivery until it has been paid for in full: The reserve of title also remains in force until all demands from the business relations with the customer are settled or all bills of exchange are cashed. We will release the object of delivery at the customer's demand to the extent that our security interest lapses. The security interest lapses insofar as the viable value of the object of delivery does not only temporarily exceed the coverage limit of 110% of the secured demands. It is assumed that the coverage limit is reached when the expertly estimated value of the object of delivery corresponds to 150 % of the secured demands at the time the release is requested. The possibility of proving another viable value of the object of delivery remains unaffected.

(2) Processing or modification always take place for us as the manufacturer. If our (co-) title expires, it is agreed already here and now that the title of the customer to the common object will be transferred to us in the ratio of the value of the total demand in accordance with § 8 Par. 2 to the value of the other objects.

(3) The following applies for the duration of the reserve of title:

a) The customer has the right to use the object of delivery but not the right to transfer to third parties, to sell or to pledge the same.

b) The customer must keep the object of delivery free from access by third parties on his own account and to notify the supplier of threats of access immediately in writing including those that concern the customer's company premises.

c) Relocation of the object of delivery requires our prior written consent and may only be performed by employees of Scharfenberger or agents authorised by them.

d) The customer must receive the object of delivery in perfect condition. He must also insure the object of delivery on his own account in favour of Scharfenberger against transport, assembly, machine breakdown, fire, burglary and mains water damage and provide proof of the insurance and payment of the premium to us on demand.

e) The customer shall allow Scharfenberger or their authorised agents to view the object of delivery and grant access to the rooms in which it is located for this purpose and undertakes to provide assistance where necessary free of charge.

(4) If the purchase price is financed by third parties (especially finance purchasing contract) the reserve of title remains agreed and the rights ensuring from the contract up to payment of the delivery demand for Scharfenberger remain until the third party is also fully satisfied by the customer according to the terms of the financing contract.

(5) We reserve the right of title as well as the copyrights to advances, drawings and system concepts and to delivered documentation. All reproductions or disclosures to third parties are prohibited.

(6) If reserved objects are installed by the customer or by his order as essential components on the premises of a third party, the customer will surrender any demands against the third party to against whom it may concern for payment with all additional rights including the granting of a security mortgage here and now to us.

§ 9 GUARANTEE

We are liable for material and legal defects with exclusion of further claims and subject to the rulings in § 10 as follows:

(1) For material defects

- a) We must be notified of a detected defect immediately in writing.
- b) We shall decide whether a defect is eliminated by repair or replacement delivery.
- c) Parts replaced under the terms of the guarantee shall become our property.
- d) If the customer prevents us from performing the guarantee, we shall be released from the liability for any resulting consequences.
- e) The customer is only entitled in case of a risk for the operational safety or to prevent unreasonably large damages to have a defect eliminated on our account. In such cases, we must also be notified immediately and the defect must be documented.
- f) In the event of a justified complaint we shall only bear the immediate costs of redelivery or replacement delivery including the costs of shipment, costs for removal and installation as well as the costs of any necessary deployment of technicians and assistants plus travel costs insofar as these do not incur unreasonable expenses for us.
- g) The customer is only entitled to withdraw from the contract within the scope of legal provisions in the event that we fail to meet a reasonable set period of grace for the guarantee (under consideration of the legal exceptions).
- h) In the case of minor defects, the customer can only claim a reduction. The right for reduction otherwise remains unaffected.
- i) Further claims are governed exclusively according to § 10 (2) of our Terms of Sale and Delivery.
- j) Our liability is especially excluded in the case of improper or unsuitable use, faulty installation or commissioning by the customer or by third parties, natural wear, incorrect or careless handling, improper maintenance, unsuitable operating media or equipment or failure to observe the user and utilisation requirements as well as safety regulations cited in the operating instructions of the object of delivery insofar as we are not responsible for the shortcomings.
- k) We will not be liable for improper repairs by the customer or third parties. We are also not responsible for such modifications to the object of delivery that are made without our prior consent.

(2) For legal defects

- a) If domestic commercial protection rights or copyrights are violated by the use of the object of delivery, we will procure (on our own account) the right of the customer for further use or modify the object of delivery in such a way that the protection rights are no longer violated. Modification of the object of delivery will be excluded if this is unreasonable for the customer.

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Insofar as we are unable to do this within a reasonable period of time or at economically reasonable conditions, both parties shall be entitled to withdraw from the contract. In addition, we will release the customer from undisputed or legally recognised demands of the owner of the protection rights concerned.

b) Our obligations listed under (2) lit.a) of this paragraph are subject finally to the rulings in 10 (2) of our Terms of Sale and Delivery for the event of violations of protection rights and copyrights.

c) The obligations in (2) lit.a) of this paragraph only exist, however, if the customer

- informs us immediately of the enforced protection rights or copyrights
- supports us to a reasonable extent in defence against the demands or enables us to make modifications in accordance with § 9 (8)
- we reserve all rights to defence measures including out of court settlements
- the legal defect is not due to a cause in the customer's area of risk, the customer makes unauthorised modifications to the object of delivery or has used it contrary to the terms of the agreement.

§ 10 LIABILITY

(1) Insofar as the customer can no longer use the object of delivery according to the terms of the agreement because we have advised or instructed him – before or after signing the contract – incorrectly or inadequately or are otherwise guilty of infringement of a contractual sub-obligation, especially the provision of incorrect or insufficient operating or maintenance instructions for the object of delivery, the rulings under § 9 and 10 (2) of our Terms of Sale and Delivery will apply with the exclusion of further claims.

(2) For damages not incurred on the object of delivery itself (so-called consequential damages), we will be liable only in case of wilful intent or gross negligence of our agents or managerial staff for whatever legal reason.

This exclusion does not apply for culpable injury to life, limb and health as well as in the case of maliciously concealed defects or in the case of a guarantee promise, also not when liability is mandatory according to the Product Liability Act for personal injury or material damage to privately used objects.

(3) In case of culpable violation of essential contractual obligations we will also be liable in case of gross negligence of non-managerial staff and for minor negligence. The liability for minor negligence is limited to contract-typical, reasonably foreseeable damages.

(4) Further claims are excluded.

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§ 11 STATUTE OF LIMITATIONS

- (1) All customer demands shall lapse, insofar as he is a merchant or juristic person, in 12 months.
- (2) The legal terms apply for damage compensation demands in accordance with § 10 (2) as well as for demands by consumers; the same applies for building defects or for objects of delivery that are normally used for a building and have caused its defectiveness.

§ 12 APPLICABLE LAW, PLACE OF JURISDICTION AND FINAL CLAUSE

- (1) The pertinent law of the Federal Republic of Germany governing domestic parties applies exclusively for all legal relations between our customers and ourselves.
- (2) For contracts with merchants or juristic persons as well as persons without fixed place of abode in Germany, Bad Dürkheim is agreed as the place of jurisdiction.
- (3) If individual terms of the contract or these Terms of Sale and Delivery are or become invalid, the other terms remain unaffected. A replacement term corresponding or similar to the purpose of the invalid term will become effective. The same applies for cases of incompleteness.

§ 13 CESSION

The cession of rights and/or the transfer of the obligation of the customer from the contract are not permitted without our written consent.

§ 14 SERVICE

If Scharfenberger has taken over the provision of installation, maintenance or instruction services as well as the delivery of spare parts, our service conditions as well as our costs rates for individual service orders apply in addition to these Terms of Sale and Delivery. These service conditions and cost rates cover all offered and executed services that we provide.

§ 15 EXPORT CONTROL REGULATIONS

The objects of delivery as well as software may be subject to the export control conditions of the Federal Republic of Germany, the European Union, the United States of America or other countries. In the case of later export of the object of delivery abroad, the customer is responsible for observing the legal regulations.

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§ 16 PLACE OF JURISDICTION AND APPLICABLE LAW

(1) The following is agreed for contracts with merchants as well as with juristic persons of public law and special fund under public law: For all contractual and non-contractual disputes from this contract the local and internationally exclusive responsibility of the courts for Bad Dürkheim is agreed. This responsibility especially excludes all other responsibility that is legally provided for because of a personal or material relation. Neither is the customer entitled to file a counter-suit, settlement or withholding against Scharfenberger before any other court than those for Bad Dürkheim.

However, we are entitled to file a suit at the headquarters of the customer or other responsible courts based on domestic or foreign law in individual cases.

(2) German law applies with the exclusion of the UN Purchasing Law if the above conditions contain no final ruling.