

# General Terms of Delivery of Martin Engineering GmbH (non-authentic translation)

Translation of the authentic German version ("Allgemeine Lieferbedingungen der Martin Engineering GmbH"). In the event of any conflicts between the German version and this English translation, the German version shall prevail.

## 1. Applicability

The following General Terms of Delivery shall apply to all delivery commitments of Martin Engineering GmbH (hereinafter „Martin Engineering“) with regard to its customers. In particular these terms shall apply to delivery commitments resulting from sales contracts and contracts for work and Services.

## 2. Conclusion of Contract

- 2.1 Offers from Martin Engineering shall not be binding. A contract shall not be deemed to be concluded Prior to Martin Engineering sending out a written confirmation of order.
- 2.2 Technical information transmitted in connection with the offer, such as details about weight and measurements as well as other descriptions of qualities and services shall only be binding, if they are explicitly specified as such in the confirmation of order.

## 3. Confidentiality

Information and documents, such as estimates of cost, details about weight and measurements, illustrations and drawings which have been transmitted to the customer in connection with the offer and which have been described as confidential or otherwise can be recognized unequivocally as business or trade secrets shall be treated confidentially by the customer. This obligation survives the end of the duration of this contract. In particular the customer shall not record, use or transfer this information or these documents to third parties, unless this is necessary for the appropriate use of the delivered goods. The customer shall treat and protect confidential information and documents at least with the same diligence he treats his own comparable matters, at least, however, with the diligence of a prudent businessman. The customer shall guarantee that its employees and contracting parties comply with the confidentiality obligations set forth in this Paragraph 3.

## 4. Delivery

- 4.1 Delivery dates and periods shall only be binding in so far as they are explicitly specified as such in the confirmation of order. Delivery periods shall commence with the date of the confirmation of order, however, they shall not commence before the customer has complied with its obligations due before delivery, such as the transmission of technical information, solicitation of permissions and not before the payments due have been received. Delivery dates and periods shall be deemed to be complied with and the delivery shall be deemed to be executed when on the due day the risk pursuant to Paragraph 5 of these General Terms of Delivery has passed to the customer. Martin Engineering shall be entitled to partial delivery.
- 4.2 Events which Cause a delay of the delivery and which Martin Engineering is not responsible for since they are beyond Martin Engineering's sphere of influence, such as i.e. force majeure, delays caused during delivery and transportation, official regulations or labour disputes shall release Martin Engineering from the obligation of punctual delivery as long as these events last. Delivery periods shall be prolonged as long as these events last. Martin Engineering shall inform the customer about the beginning and the end of these events in an appropriate manner. If the events last longer than three months, each party is entitled to withdraw from the contract. In this case the customer has no right to claim for damages.
- 4.3 If the customer suffers a damage as a result of a delay which has been caused through Martin Engineering's fault, the customer shall be entitled to claim as said damage one half per cent for each complete week of the delay, however, at the most five per cent of the value of those goods of the delivery which as a result of the delay cannot be used in time or as provided in the contract. The assertion of any further claims shall be excluded, unless the delay is caused by gross negligence of Martin Engineering. A delay caused by public holidays or company vacation shall be deemed to be caused without Martin Engineering's fault.
- 4.4 If the customer is in default of acceptance or the delivery is delayed as a result of other reasons the customer is responsible for, Martin Engineering shall be entitled to withdraw from the contract after an unsuccessful expiry of an appropriate grace period. Instead, Martin Engineering shall, at its sole discretion, be entitled to choose to use the goods provided for delivery for a different purpose and to perform the contractual obligation within an appropriately extended time limit. Further rights shall remain unaffected.

## 5. Passing of Risk

- 5.1 Upon passing the goods to the haulier the risk passes to the customer. This is also the case when Martin Engineering has committed itself to service obligations which go beyond passing the goods to the haulier, such as the sending out or putting up of the goods. Martin Engineering shall insure the products at customer's request and at customer's expenses against theft, breakages, damages caused during transportation, by fire and water as well as against other insurable risks. If the customer is in default of acceptance or if the delivery of goods is delayed as a result of other reasons the customer is responsible for the risk passes to the customer on the day Martin Engineering is prepared to deliver.
- 5.2 The customer shall be obliged to accept delivered products, unless the products show substantial defaults. Paragraph 9 of these General Terms of Delivery shall remain unaffected.

## 6. Compensation, Terms of Payment, Setting off and Rights of Retention

- 6.1 The compensation for the delivery shall be calculated on the basis of the price list applicable on the date of the confirmation of order. The prices shall include loading at the factory, however, excluding packaging, plus turnover tax to the statutory amount. Payments shall be due in cash without deduction within the payment period stated in the confirmation of order. If the customer is in default with regard to payments, interests to the amount of four percent above the respective discount rate of the Federal Bank of Germany shall be due. The assertion of further claims remains unaffected.
- 6.2 The assertion of a right of retention or a setting off by the customer shall only be admissible with regard to such claims of the customer which are uncontested or finally determined by court.

## 7. Reservation of ownership

- 7.1 Martin Engineering reserves its ownership of the delivered goods as well as of the products manufactured by processing these goods until all existing or future claims against the customer are fulfilled. The customer shall process the delivered goods for Martin Engineering which, however, does not result in obligations for Martin Engineering.
- 7.2 Possible co-owner's interests resulting from processing, connecting, combining or mixing of the supplied goods with products of third parties are hereby assigned to Martin Engineering by the customer. Martin Engineering accepts this assignment.
- 7.3 The customer shall possess the goods which Martin Engineering owns solely or partly as a safekeeper for Martin Engineering with the diligence of a prudent businessman.
- 7.4 A sale by the customer of the goods Martin Engineering owns solely or jointly shall only be allowed in the ordinary course of business of the customer. The customer hereby assigns as a security for all existing or future Claims of Martin Engineering against the customer all claims arising out of the sale of said goods or out of other legal grounds concerning those goods. Martin Engineering accepts this assignment. The customer shall be authorized to collect on a trust basis the assigned Claims for Martin Engineering.

- 7.5 If the customer is in default with the obligations he has vis-à-vis Martin Engineering, Martin Engineering can take back those goods covered by the reservation of ownership notwithstanding its other rights hereunder and use them to satisfy said claims against the customer. In this case the customer shall immediately grant Martin Engineering access to the goods covered by the reservation of ownership and return them. This claim for return shall not be regarded as a withdrawal from the contract, unless the Statute on Consumer Credit applies.

- 7.6 Martin Engineering shall be authorized to insure in a suitable way at the expenses of the customer the goods covered by the prolonged reservation of ownership until the goods pass completely into the ownership of the customer, unless the customer itself has probably entered into such insurances. If the customer enters into such insurances he hereby assigns his claims with respect to the corresponding insurance contract to Martin Engineering proportionally to the ownership shares of Martin Engineering; Martin Engineering accepts this assignment.

- 7.7 At any time the customer shall give all desired information about the goods covered by the reservation of ownership and the connected Claims assigned to Martin Engineering. The customer shall immediately indicate attachments or claims of third parties with respect to these goods and hand over any required documents. The customer shall draw the attention of the third parties to the existing reservation of ownership. The costs of a defense against such attachments and claims shall be borne by the customer.

- 7.8 If Martin Engineering delivers goods into countries in which the reservation of ownership provided for hereunder does not have the same effect of security as it has in the Federal Republic of Germany, the customer shall undertake everything necessary in order to provide Martin Engineering with corresponding security interests. The customer shall cooperate with regard to all Steps which are required for or conducive to the effectiveness and the enforceability of such security interests, such as registrations and publications etc..

- 7.9 If the realizable value of the securities granted in or according to this Paragraph 7 exceeds the secured claims of Martin Engineering by more than 20 percent, the customer is authorized to this extent to Claim for the release of the existing security. Furthermore, Martin Engineering can revoke the authorization of the customer to sell the goods covered by the reservation of ownership according to Paragraph 7.4 of these General Terms of Delivery, if the customer does not fulfill his obligations of the reservation of ownership provided for hereunder.

## 8. Warranty

Martin Engineering shall be liable for defaults of the delivered goods as follows, while any further claims of the customer shall be excluded:

- 8.1 Martin Engineering shall at his discretion repair the defaultive goods free of charge or deliver new goods. Costs for the returning of defaultive goods shall be borne by the customer. The replacement parts used to repairing purposes are covered by the reservation of ownership according to Paragraph 7 of the General Terms of Delivery. Replaced goods shall become property of the supplier. The customer shall only be authorized to remove or have removed defaults on his own or by third Parties at the expenses of Martin Engineering if this is necessary in an urgent case of danger for the industrial safety or in case of threatening disproportionate high damages, or if Martin Engineering is in delay with the removal of the default. If the rectification of defaults is insufficient the right of the customer to rescind the contract remains unaffected.
- 8.2 The customer shall check the goods when they have been delivered and inform Martin Engineering in writing about damages immediately, however, at the latest ten days after the delivery. Latent damages shall be reported to Martin Engineering in writing immediately after they have been discovered. If a notice of defects turns out to be unjustified, Martin Engineering shall be compensated for all expenses by the customer resulting from this notice of defects.
- 8.3 The limitation period for breach of warranty consists of twelve months beginning with the date of delivery. Martin Engineering shall not take over any guarantee for damages caused by the following reasons: improper utilization, incorrect mounting or putting into Operation by the customer or by third Parties, usual wear and tear, incorrect or negligent treatment, unsuitable equipment or replacement material, poor construction work or unsuitable building site or chemical, electrochemical or electrical impacts, unless such reasons are caused by the supplier.

## 9. Liability

- 9.1 Martin Engineering shall only be liable for claims for damages based on statutory or contractual grounds (in particular in the case of inability, impossibility, default, positive claim infringement, fault in case of contractual negotiations, violation of obligations in case of removal of defects, tortious acts etc.), if said damages are caused intentionally or grossly negligently or by violating material contractual obligations. Martin Engineering shall not be liable for damages caused by grossly negligent conduct of its employees who are not in a leading position, unless material contractual obligations have been breached or this disclaimer conflicts with applicable customary commercial usages.
- 9.2 The limitation on liability determined in Paragraph 9.1 of these General Terms of delivery shall not include the liability according to the statute on product liability as well as a liability resulting from the breach of representations and warranties, if said representations and warranties are specifically designed to protect the customer against the caused damage.
- 9.3 Martin Engineering shall be liable for damages caused by its employees who are not leading employees as well as for damages which are caused by the simply negligent breach of material contractual obligations, only in an amount which shall be limited to the damages foreseeable at the time of the conclusion of the contract, based on the known and negligently unknown circumstances. In any case the compensation of the damage shall be limited to the amount of 1 Mio. Euro covered by the employers' liability insurance of Martin Engineering.
- 9.4 Martin Engineering shall not be liable for such damages which are attributed to the failure of the customer to comply with his duties.
- 9.5 If the customer acts as a reseller of the goods or processes the goods to new products the customer indemnifies Martin Engineering from all Claims of third Parties with regard to product liability unless these are not based on grossly negligent or intentional conduct of Martin Engineering.

## 10. Final Provisions

- 10.1 If a provision of the contract or of these General Terms of Delivery is completely or partly invalid, the validity of the remaining provisions shall remain unaffected. In this case the parties shall replace the invalid provisions by valid provisions or close the gap by a provision which is closest to the commercial purpose of the contract.
- 10.2 Deviations from the General Terms of Delivery as well as collateral agreements and alterations of the contract have to be made expressly and in writing.
- 10.3 The customer shall not be authorized to assign his claims specified in this contract.
- 10.4 Place of performance for all deliveries shall be the place of delivery.
- 10.5 The law of the Federal Republic of Germany, excluding the UN-Convention on Contracts for the International Sale of Goods (CESG) shall be applied.
- 10.6 Venue for all kinds of disputes arising out of the contract and the General Terms of Delivery shall be Frankfurt/ Main. Martin Engineering, however, shall be authorized to sue the customer at all applicable statutory venues.