

General Terms and Conditions of Sale and Delivery of AEROTECH GmbH

1. Applicability of these Terms and Conditions

- 1.1 Our General Terms and Conditions of Sale and Delivery ("Terms of Sale") apply exclusively; we will not recognise any terms of the Buyer which oppose, supplement or deviate from our Terms of Sale unless we have expressly consented in writing to their application. Our Terms of Sale will apply exclusively even if we supply the Buyer without reservation in the knowledge of opposing terms or terms of the Buyer deviating from our Terms of Sale, without again objecting to the applicability of opposing, supplemental or deviating terms and conditions of the Buyer.
- 1.2 Our Terms of Sale will also apply to all future business transactions with the Buyer.

2. Conclusion of Contract and Scope of Delivery

- 2.1 Offers, price lists, etc. which we send to the Buyer are, as a rule, subject to change and non-binding. If we designate an offer expressly as binding, it will be binding for ten working days from the date of the offer. Orders of the Buyer are binding. We can accept such orders within four weeks.
- 2.2 A contract comes about by us confirming the order in writing or starting to carry out the order.
- 2.3 The scope of delivery is determined exclusively by our written order confirmation. Side agreements and changes require our written confirmation. Qualities of the products stated in our publications or those of our sales representatives, in particular in advertising, drawings, brochures or other documents or on packaging and labelling of the products or which fall under trade usages, will only be deemed to be covered by the contractually agreed quality of the products if such qualities are expressly contained in a binding offer or an order confirmation.
- 2.4 Guarantees, in particular guarantees as to quality [*Beschaffheitsgarantien*], will be binding on us only in the scope in which they (i) are contained in a binding offer or order confirmation, (ii) are expressly designated as a "guarantee" or "guarantee as to quality", and (iii) expressly stipulate our obligations resulting from such guarantee.
- 2.5 We reserve without limitation all title and copyright in cost estimates, drawings and other documents. If the order is not placed with us, drawings and other documents belonging to offers are to be returned without undue delay upon request.
- 2.6 Such cost estimates, drawings and other documents must not be made available to third parties to the extent they contain technical knowledge which is not generally known or publicly available in its entirety or as regards the exact design and composition of its components. We are under a corresponding obligation as regards any such documents of the Buyer. The party arguing that such technical knowledge is generally known or publicly available have to furnish proof for this.
- 2.7 If the scope of goods and services also includes the motion control including software, the title in such motion control together with the other system parts will pass to the Buyer. The Buyer is granted a licence for use of the software pursuant to clause 11 of these Terms of Sale. Apart from that, all rights in the software will remain with us.

3. Delivery Time

- 3.1 Delivery dates will as a rule only be agreed approximately. Dates for deliveries and services will be binding only if expressly confirmed by us in writing as binding. In the event of non-binding delivery dates we will be in delay in delivery upon a written request by the Buyer which may be made at the earliest one month after expiry of the non-binding delivery date. We remain entitled to deliver before a stated delivery date.
- 3.2 The delivery period will commence upon dispatch of the order confirmation. The delivery period is observed if prior to its expiry the object of delivery has left our distribution plant or if we have given notice of its readiness for delivery. Observance of the delivery period is conditional on all commercial and technical questions having been settled conclusively between the contractual parties when the delivery period is agreed upon and on the Buyer having met all co-operation obligations incumbent on it in time, in particular with regard to the provision of documents and information. If this is not the case or if subsequent changes of the object of delivery are agreed upon, the delivery period will be reasonably extended.
- 3.3 The above is subject to correct and timely delivery to us by our suppliers.
- 3.4 In the event of measures taken within the scope of industrial action in our plant, notably strike and lawful lockouts, as well as upon the occurrence of unforeseeable events for which we are not responsible, the delivery period will be extended by the duration of the interruption of business operations triggered by such impediments, plus a reasonable start-up period. This also applies if such circumstances, including unlawful industrial action, occur with suppliers. We will not be responsible for the foregoing circumstances even where such circumstances occur during an already existing default. The Buyer will be informed of the beginning and the end of such impediments as soon as possible.
- 3.5 We are entitled to effect part deliveries to the extent the Buyer can reasonably be expected to accept such delivery, in particular if the delivery of the remaining ordered products is ensured and no considerable additional effort or expense is incurred to the Buyer thereby (unless we agree to assume such costs). Each part delivery can be invoiced separately.

4. Prices

- 4.1 The prices shall be understood ex works / stock Fuerth, Germany, or such other location on which the parties have agreed, plus packaging and shipping, customs duty and clearance costs.
- 4.2 The prices shall be understood plus value-added tax at the applicable statutory rate at the time of invoicing.
- 4.3 We reserve the right to adjust our prices accordingly if after conclusion of the contract cost adjustments occur, in particular due to the conclusion of collective agreements, changes in the prices for materials or exchange rate fluctuations, for which we are not responsible. Proof of this will be submitted to the Buyer upon request.
- 4.4 Orders for which no fixed prices were expressly agreed will be calculated at the delivery prices valid on the day of delivery.

5. Payment

- 5.1 Payments are to be made directly to us only. Sales agents and travelling employees are not authorised to receive money.
- 5.2 The settlement of invoices through bills of exchange, provided they are discountable, will be possible only on account of performance [*erfüllungshalber*] and only if agreed in advance. The Buyer has to pay discount charges as of the due date of the invoice amount.
- 5.3 Set-off and/or exercise of a right of retention due to possible counterclaims of the Buyer which are contested by us and not final and *res judicata* are excluded. The exercise of any retention right is also excluded to the extent that the counterclaim is not based on the same contractual relationship.
- 5.4 Invoices are payable within 30 days net as of the invoice date without any deductions. We reserve the right to make deliveries only against advance payment, payment concurrent with delivery or cash on delivery. This applies in particular to first orders or after the granted payment term has been exceeded. Invoices for repairs and services are immediately payable net cash.
- 5.5 If the payment term is exceeded, the Buyer will be in default without any further reminder being necessary. The time on which the invoice amount is credited to the account specified by us will be decisive for determining whether the payment has been made in time. In the event of default of payment, we may charge default interest in the amount of eight percentage points above the basic interest rate.
- 5.6 The purchase price will be due and payable immediately if the Buyer becomes illiquid or if it applies for the opening of insolvency proceedings. The same applies if the Buyer sells its business or if it is replaced by another owner.

6. Avoidance, Suspension or Cancellation

The avoidance, suspension or cancellation by the Buyer of placed orders requires our express written approval. In such event, we are entitled to compensation in the amount of 10% of the net order value while reserving the right to assert a higher actual damage. The Buyer has the right to furnish proof that the damage is lower.

7. Transfer of Risk and Shipping

- 7.1 The risk will pass to the Buyer at the latest upon delivery to the carrier or other forwarding agent. This also applies to part deliveries. This provision also applies in the event that we assume the costs for shipping on an exceptional basis due to individual agreement. The risk will also pass to the Buyer pursuant to sentence 1 if the shipping is made from another location.
- 7.2 If the delivery is delayed due to circumstances which are not attributable to gross negligence or intent on our part, the risk will pass to the Buyer as of the day of readiness for delivery, to the extent notified to the Buyer, upon receipt of the shipping notification.
- 7.3 Upon the Buyer's request, the consignment will be insured by us according to its instructions and at its cost.

8. Reservation of Title

- 8.1 We will retain title in the delivered products until all receivables under the business relationship have been paid in full. This also applies to receivables arising from any current account balance until receipt of all payments from acknowledged balances.
- 8.2 For the duration of the reservation of title the Buyer is not entitled to pledge the delivered products in which title is reserved ("Reserved Products") nor to use the same as security. The Buyer is entitled to resell the Reserved Products in the course of its ordinary business activities; however, it already now assigns to us all claims equal to the final invoice amount (including value-added tax) accruing to it against its customers or third parties from the resale, regardless of whether the Reserved Products have been resold without or after processing. The Buyer is not entitled to sell the Reserved Products to customers that have excluded or limited the assignment of payment claims against them. The Buyer remains entitled to collect such claim also after assignment. Our entitlement to collect the claim ourselves will not be affected thereby. However, we undertake not to collect the claims as long as the Buyer fulfils its payment obligations from the proceeds taken in, is not in default of payment, does not suffer financial collapse and notably has not filed an application for the opening of insolvency proceedings or suspended its payments. If this is the case, though, we may request that the Buyer disclose to us the assigned claims and their respective debtors, furnish all data necessary for collection, hand over to us all documents pertaining thereto and inform the debtors (third parties) of the assignment. If such a case occurs, the Buyer's right to collect the claims is extinguished. To the extent that a current account relationship exists between the Buyer and its customers pursuant to Sec. 355 of the German Commercial Code [*Handelsgesetzbuch – HGB*], the claim assigned to us in advance by the Buyer will also relate to the acknowledged balance, as well as to the balance surplus existing from the closing balance in the case of the customer's insolvency.
- 8.3 Any processing [*Verarbeitung*] or reworking [*Umbildung*] by the Buyer of the Reserved Products will always be performed for us. If the Reserved Products are processed or reworked with other objects not belonging to us, we will acquire co-title in the new thing in the proportion of the value of the Reserved Products to the other processed or reworked objects at the time of processing. In all other respects, the same provisions as for the Reserved Products apply for the new thing created through processing or reworking.
- 8.4 If there is inseparable intermixture [*Vermischung*] or combination [*Verbindung*] of the object of delivery with other objects not belonging to us, we will acquire co-title in the new thing in the proportion of the value of the Reserved Products to the other intermixed or combined objects at the time of commingling or combination.
- 8.5 If the Buyer acquires sole title in the new thing (by the processing, combination, intermixture or commingling) it will be deemed agreed that the Buyer will transfer to us co-title in the new thing on a pro rata basis. The Buyer will keep the sole title or co-title created pursuant to clauses 8.3 to 8.5 for us free of charge in safe custody.
- 8.6 If the Reserved Products are resold together with other products (regardless of whether with or without the processing, combination, intermixture or commingling), the advance assignment agreed pursuant to clause 8.3 above will apply only in the value of the Reserved Products which are resold together with the other products. If the Reserved Products have been reprocessed together with other objects not be-

longing to the Buyer, the advance assignment will be effected only in the proportion of the co-title shares in the new thing.

- 8.7 As security for our claims against the Buyer, the latter also assigns to us the claims accruing against third parties due to the combination of the object of delivery with real property.
- 8.8 In the event of attachments or any other interference by third parties with our title or the claims assigned to us, the Buyer shall notify us thereof in writing without undue delay. Furthermore, in such event we are to be provided with all documents required to avert the attachment or other interferences. To the extent the third party is unable to reimburse us for the court and out-of-court costs of a legal action pursuant to Sec. 771 of the German Code of Civil Procedure [*Zivilprozessordnung – ZPO*], the Buyer will be liable for the loss incurred to us.
- 8.9 In the event of breach of contract by the Buyer, in particular default of payment, we are entitled to rescind the respective order and to recover the Reserved Products. In the case of default of payment, the rescission does not require an advance setting of a time period. For the purpose of recovering the Reserved Products we will be entitled to enter the Buyer's business premises during normal business hours. After recovery of the Reserved Products, we will upon prior warning be entitled to realise the same in a reasonable manner; the realisation proceeds are to be applied to the liabilities of the Buyer less reasonable realisation costs.

9. Claims for Defects

- 9.1 The pre-requisite for the Buyer's warranty claims (claims for defects) is that the Buyer inspects the products and effects proper notification of defects pursuant to Sec. 377 HGB. Notifications of defects must be made in writing and provide specific details of the defect. Obvious defects must be notified to us in writing within one week of delivery, hidden defects within one week of being discovered. The periods specified are preclusion periods. The acceptance of the products may not be refused for defects that are not of a material nature. The costs for inspection of the products will be borne by the Buyer. Upon request, we must be provided with the defective products for examination.
- 9.2 In the event of a product defect, we may remove the same, at our choice, through rectification [*Nachbesserung*] or replacement delivery [*Ersatzlieferung*]. If the rectification or replacement delivery fails finally, the Buyer will be entitled, at its choice, to rescission of the order [*Rücktritt*] or a reasonable reduction in the purchase price [*Minderung*]. Rectification or replacement delivery will be made without acknowledgment of a legal obligation. In the event of rectification, the remainder of the original limitation period will run from the return of the rectified products. The same applies in the case of a replacement delivery.
- 9.3 The limitation period for claims for defects is twelve months from delivery. This limitation, however, does not apply if (i) a defect was fraudulently concealed or (ii) a guarantee as to the quality of a product was given (the guarantee provisions and the limitation period resulting from the guarantee may apply in this respect, where appropriate). In the event of claims for damages, this limitation does furthermore not apply in the following cases: (i) injury to life, body or health, (ii) intent and (iii) gross negligence on the part of our officers or executive staff.
- 9.4 No claims for defects will exist for non-material deviations from the agreed quality which do not impair use to an unusual extent, for ordinary wear and tear, faulty or negligent treatment, unsuitable or improper use, faulty assembly or initial operation by the Buyer or any third party instructed by the Buyer, use exceeding what is deemed reasonable, use of inappropriate expendables, chemical, electrochemical or electronic influences, or non-reproducible software errors, to the extent the damage is not attributable to fault [*Verschulden*] on our part. Claims for defects attributable to improper modifications or repairs by the Buyer or any third party instructed by the Buyer are also excluded.
- 9.5 If the Buyer wrongly asserts claims for defects, we will be entitled to charge to the Buyer the reasonable expenses incurred to us for determining and/or removing the defect. The same applies if we wrongly grant rights in respect of defects without being obliged to do so.
- 9.6 Claims of the Buyer for expenditure required for the purpose of subsequent performance [*Nacherfüllung*], in particular the costs of transport, journeys, labour and material, are excluded to the extent that the expenditure is increased as a result of the products being brought to a place other than the agreed place of delivery. We are entitled to invoice such increased costs to the Buyer. Also excluded are claims of the Buyer due to installation and de-installation costs. The Buyer can claim such costs only as claims for damages pursuant to clause 10.
- 9.7 Further claims for defects of any kind whatsoever are excluded, without prejudice to any claims for damages restricted according to clause 10.

10. Liability

- 10.1 Our liability for damages caused by slight negligence is limited to damages incurred by a breach of material contractual obligations, the fulfilment of which is an essential pre-requisite for proper performance of the contract and the fulfilment of which the contracting party generally relies on and may generally rely on; in such event liability will, however, be limited to the typical foreseeable damage. This limitation of liability will apply in the same manner for damages caused by gross negligence on the part of our employees or agents who are not our officers or executive staff.
- 10.2 In the cases of clause 10.1 we will not be liable for indirect damage, consequential damage caused by defects, or loss of profit.
- 10.3 The parties agree that in the cases set forth in clause 10.1 the maximum amount for typically foreseeable damage to property will never exceed EUR 500,000. The maximum amount for typically foreseeable mere pecuniary losses will never exceed EUR 250,000.
- 10.4 The Buyer is obliged to take suitable precautions to protect its data and programs, in particular by making back-up copies in machine-readable form at intervals which are customary in its field of activity, however at least on a daily basis. Notwithstanding the other provisions of this clause 10, we will not be liable for the loss of data and its recovery to the extent this could have been avoided if the obligations set out in this provision had been adhered to.
- 10.5 In the cases of clause 10.1, the Buyer's claims for damages will become statute-barred at the latest two years from the point in time the claim arose and the Buyer became aware of the damage or, regardless of this awareness, at the latest three years after the damaging event. For claims based on defects of the products, the limitation period pursuant to clause 9.3 applies.

- 10.6 The above limitations of liability apply to all claims for damages, irrespective of their legal basis, except for damage claims of the Buyer (i) due to intent, (ii) under the German Product Liability Act [*Produkthaftungsgesetz – ProdHaftG*], (iii) due to fraudulently concealed defects, (iv) due to defects for which a guarantee as to quality was given (the liability provisions and the limitation period resulting from the guarantee may apply in this respect, where appropriate), (v) based on injury to life, body or health, or (vi) due to gross negligence on the part of our officers or executive staff.
- 10.7 Clauses 10.1 to 10.6 also apply in the case of any claims for damages of the Buyer against our employees, staff members or agents.

11. Software Licence

- 11.1 Unless special licence conditions are agreed upon, we grant to the Buyer a non-exclusive, personal licence to use the software delivered by us subject to the provisions set forth hereinafter. The Buyer may use the software exclusively in accordance with these Terms of Sale.
- 11.2 The Buyer is not entitled to perform the following acts:
- Modification, adaptation, translation, processing, arrangement or other reworking of the software as well as the reproduction of results achieved from the same unless these acts are necessary for the rectification of defects and we have not offered rectification within a reasonable time period and not carried out the rectification within such a time period in the case of being commissioned to do so;
 - disassembly, decompilation, reverse engineering or use of any other process to obtain the source code, unless such processes are required to achieve interoperability of an independently created computer program with other programs and we have not made available the information requisite for this within a reasonable period;
 - reproduction of the software with the exception of the installation of the software and the creation of a back-up copy which is to be designated as such;
 - removal or modification of trademarks, copyright or other notices with reference to intellectual property rights in respect of the software;
 - loaning, renting, leasing or other temporary provision of the software to third parties for use by the same.
- 11.3 The Buyer may only transfer the rights to third parties if (a) it notifies us in advance thereof in writing, and (b) the third party confirms in writing that it is bound by these Terms of Sale with regard to the software, and (c) the Buyer does not keep any copies of the software. We can object to the transfer of rights if (a) the software recipient is a competitor of us, or (b) the transfer violates export restrictions.
- 11.4 The licence will terminate (a) ten days after receipt of the Buyer's written notification that it does not wish to continue using the software, or (b) at the point in time our termination of the respective software licence due to a breach of a term of these Terms of Sale becomes effective.
- 11.5 After termination of the licence, the Buyer is obliged to cease using the software and to return all copies and partial copies of the software to us at its own expense or to destroy such copies and to provide us with proof thereof.

12. Place of Jurisdiction, Governing Law and Miscellaneous

- 12.1 Fuerth is the exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship. At our choice, we may also take judicial and extra-judicial measures at the general place of jurisdiction of the Buyer.
- 12.2 The contract is governed by German law. The applicability of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.
- 12.3 Should individual provisions of these Terms of Sale be or become invalid, the validity of the remaining provisions of will not be affected thereby.

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