



### **I. Quote**

1. The documents belonging to the quote, such as figures, drawings, declarations of weight and dimensions shall only be decisive to an approximate extent, unless these have been explicitly designated as binding. The Supplier reserves the rights in terms of proprietary and copyrights in quotations, drawings and other documents; these shall only be made accessible to any third party within the scope of the bidding process.
2. The Purchaser shall take over the sole responsibility for documents, such as drawings, gauges, samples or similar to be procured by him. The Purchaser shall be furthermore responsible for guaranteeing that the execution drawings do not intervene with any third-party copyrights. The Supplier shall not be obliged vis-à-vis the Purchaser to investigate whether by submitting quotations any third-party copyrights are violated on the grounds of the execution drawings presented by him in the case of an execution. If the Supplier is nevertheless deemed to be liable, the Purchaser shall indemnify him.
3. Samples shall only be supplied against extra charge.

### **II. Scope of delivery**

1. With regard to the scope of delivery, the written order confirmation of the Supplier shall be decisive, in the event of a quote of the Supplier with timely commitment and acceptance of the quote within the given time limit, unless no order confirmation is available in due time. Ancillary agreements and modifications shall not be valid unless these have been confirmed in writing by the Supplier.

### **III. Price and payment**

1. For want of a special agreement, the prices shall be principally deemed to be ex works including loading of the goods within the factory without packaging. The prices shall not include the statutory Value Added Tax in the respective legal amount, this shall be added to the prices.
2. For want of a special agreement, the regulations governing payment terms specified in the quote shall be applicable.
3. A retention of payments or offsetting hereof on the grounds of counterclaims of the Purchaser which have possibly been disputed by the Supplier shall not be permissible.



4. In the case of default in payment interest on late payments in the amount of 5 % above the Basic Interest Rate in compliance with § 1 of the transitional law for discount rates dated 09.06.1998 shall be payable according to the laws governing the accelerated settlement of due payments dated 30.03.2000. The enforcement of further default damage shall not be excluded hereby. Vis-à-vis contractors an interest rate of 8 % above the basic interest rate dictated by the EZB (European Central Bank) shall be applicable.

#### **IV. Delivery period**

1. The delivery period shall begin at the point of sending the order confirmation, however not before furnishing the documents, approvals, releases to be procured by the Purchaser as well as before receipt of an agreed down payment.

2. The delivery period shall be deemed to be complied with if by the end of this period the delivery item has been delivered at the contractually agreed place of installation resp. the readiness for delivery has been communicated in the event a delivery not being possible at the place of installation for the reasons caused by weather.

3. The delivery period shall be extended appropriately in the case of measures within the scope of labour disputes, in particular, strikes and lockouts, as well as in the case of occurrence of unforeseen impediments lying beyond the intention of the Supplier, in so far as such impediments have a demonstrable decisive influence on the completion or delivery of the delivery item. This shall also be applicable if the circumstances occur on the part of subcontractors.

The above-mentioned circumstances shall also not be justified by the Supplier if they occur within the scope of an already given default. The Supplier agrees to inform the Purchaser as soon as possible of the beginning and end of such impediments.

4. The compliance with the delivery period shall require the Purchaser's compliance with his contractual obligations.

#### **V. Transfer of risk and acceptance**

1. The risk shall pass on to the Purchaser as soon as the delivery item has left the factory; this shall also be the case if partial deliveries take place. In so far as an acceptance is required, this shall be decisive for the transfer of risk. The delivery item(s) must be



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immediately accepted following the Supplier's notification of the readiness for delivery. The Purchaser shall not be entitled to reject an acceptance in the event of an insignificant defect. For want of special instructions transport means and routes of transport shall be left up to our discretion.

By the Purchaser's special request the consignment shall be insured against insurable risks by the Supplier. The costs for this insurance shall be charged to the Purchaser.

2. If the shipment is delayed by circumstances which are to be justified by the Purchaser, the risk shall pass on to the Purchaser from the day of readiness for delivery; the Supplier shall, however, be obliged to take out the insurance coverage requested by the Purchaser and shall charge the costs herefor to the Purchaser.

3. Partial deliveries shall be permissible.

### **VI. Retention of title**

1. The Supplier shall retain title in the delivery item until all accounts receivable of the Supplier vis-à-vis the Purchaser from the business relationship including any accounts receivable arising in the future, also from simultaneously concluded agreements or contracts concluded at a later point of time have been settled. This shall also be applicable if any individual or if all accounts receivable of the Supplier have been included in one running invoice and the balance has been calculated and acknowledged. In the event of conduct by the Purchaser contrary to the contractual regulations, in particular in the event of default in payment the Supplier shall be authorised to recall and redeem the delivery item after a reminder and the Purchaser shall be moreover obliged to surrender the delivery item. In the redemption as well as in the hypothecation of the object by the Supplier a rescission from the Agreement shall only be given, if the Supplier has explicitly declared this rescission in writing. In the event of execution or any other third-party intervention the Purchaser shall immediately inform the Supplier in writing hereof.

2. The Purchaser shall be authorised to resell the delivery item in the scope of normal business transactions. He shall, however, assign all accounts receivable with all ancillary rights to the Supplier with at this point of time to which he is entitled from such a resale vis-à-vis the customer or any third party. The Purchaser shall also be empowered to collect these accounts receivable after the assignment, as long as he acts in compliance with the agreement and as long as no insolvency is given.



The Supplier's authorisation to collect the accounts receivable shall not be affected hereby; the Supplier, however, commits himself not to collect the accounts receivable as long as the Purchaser complies with his payment obligations according to the rules and regulations and no insolvency is given. The Supplier shall otherwise be entitled to demand the Purchaser to disclose the assigned accounts receivable and to state their debtors, to surrender any and all specifications required for collection thereof, to present the respective documents and to inform the debtors of the assignment. If the delivery item is resold together with products which do not belong to the Supplier, the Purchaser's account receivable against the customer in the amount of the delivery price agreed between the Supplier and the Purchaser shall be deemed to be assigned.

3. If the Supplier's securities exceed the realisable value of the accounts receivable by 20 %, the Supplier shall release the accounts receivable exceeding this amount.

4. The Supplier shall be authorised to insure the delivery item at the Purchaser's expense against theft, destruction, fire, water and other damages, unless the Purchaser has taken out such an insurance coverage himself and has documented proof thereof.

5. The Purchaser shall neither hypothecate nor place in escrow the delivery item. In the case of any hypothecation or levy or any other disposition by a third party, the Purchaser shall immediately inform the Supplier thereof.

## **VII. Liability for defects of the goods delivered**

The Supplier shall be liable for defects of the goods delivered to the exclusion of further claims and taking the regulations stipulated in section X into account as follows:

1. Unless no other agreement has been made, the Supplier shall grant a warranty period of 12 months in the case of proper use within the parameters specified **following** installation of the system by the Supplier and **acceptance of the system by the Purchaser**.

We shall not assume any liability/warranty for wear and tear of wearing parts, e.g. sealings, bearings, abrasive wear in corrosion protection, transport chains, control shafts, slide bars at the rake cleaner etc..

The Supplier shall be immediately informed in writing of the identification of defects. The Purchaser shall grant the Supplier the opportunity to examine the damage case. Title in the replaced parts shall pass on to the Supplier. The Supplier shall only warrant for defects in the material supplied by the Purchaser, if he had been able to identify the defects on applying due professional care.



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Warranty claims shall not arise if the error is due to a violation of operating resp. maintenance regulations or to non-compliance with the performance parameters, unsuitable or improper use, faulty or negligent treatment and natural wear resp. wear and tear or for any intervention into the delivery item by the Purchaser or by any third party.

In the event of production in compliance with drawings presented by the Purchaser, the Supplier shall only warrant for a construction in line with the drawing.

2. Warranted and service life properties have to be designated individually and explicitly in writing as such.

3. No warranty shall be assumed for damages arising in consequence of the following reasons:

- faulty assembly resp. installation by the Purchaser or third party,
- unsuitable operating facilities and tools,
- chemical, electrochemical or electrical influences, unless these are due to negligence on the part of the Supplier.

4. To undertake any and all remedies and substitute deliveries which are deemed to be necessary at the discretion of the Supplier, the Purchaser shall be given the time and opportunity required after coming to an agreement in this respect with the Supplier, otherwise the Supplier shall be exempt from warranty for defects. Only in urgent cases of danger to the operational safety and to avert inappropriately large damages, whereby the Supplier shall be immediately informed, or if the Supplier defaults in eliminating the defect, shall the Purchaser have the right to remedy the defect himself or to have the defect remedied by a third party and shall be entitled to demand compensation of the necessary costs by the Supplier.

5. Of the costs directly incurred as a result of remedy of the defects resp. substitute delivery the Supplier shall bear the costs for the substitute item including installation hereof at the installation site in so far as the complaint is deemed to be justified. For the rest, the Purchaser shall bear the costs.

6. For the substitute item and the remedied parts the warranty period shall be 12 months; it shall be in force at least to the end of the original warranty period specified for the delivery item.

7. The agreed warranty shall be forfeited for the consequences incurred as a result of improper modifications or maintenance operations made on the part of the Purchaser or any third party without previous approval by the Supplier.



8. Further claims on the part of the Purchaser, in particular claims for compensation of damage which was not incurred to the delivery item itself, shall be excluded. This regulation also covers claims from lacking resp. reduced energy generation.

This disclaimer of warranty shall not apply in the event of intent, gross negligence of the owner or executive employee, or in the case of any culpable infringement of substantial contractual obligations.

In the event of culpable infringement of substantial contractual obligations the Supplier shall warrant only for the contractually typical and reasonably foreseeable damage – with the exception of cases of intent and gross negligence of the owner or executive employee.

The exemption from liability shall furthermore not apply in the cases in which a warranty is applicable for defects in the delivery item according to the product liability act for damage to persons or property in privately used objects. It shall also not apply if properties which have been explicitly guaranteed are lacking, and in particular if the purpose of the warranty had been to protect a Purchaser against damage which did not arise in the delivery item itself.

#### **VIII. Warranty for secondary obligations**

If as a result of negligence on the part of the Supplier the object delivered cannot be used by the Purchaser as a result of omitted or faulty workmanship, on the grounds of proposals and advice given before or after undersigning the agreement, as well as other contractual secondary obligations, in particular instructions for use and operation of the delivery item, the regulations specified in Sections VII and IX shall apply accordingly to the exclusion of further claims on the part of the Purchaser.

#### **IX. Use of production means, drawings and confidential specifications of the Purchaser**

Models, matrices, drawings, samples, production means as well as confidential information made available to the Supplier by the Purchaser or in the costs of which the Purchaser was substantially involved, shall only be used for the purpose of fulfilling the respective agreement with the Purchaser and only with previous written approval by the Purchaser for the Suppliers own purposes and for deliveries to third parties.

#### **X. Purchaser's right to rescission and other liability of Purchaser**

1. Within the scope of legal regulations the Purchaser shall be entitled to rescission from the agreement if the Supplier – taking the statutory cases of exception into account – allows an appropriate period set by him for the purpose of remedy or subsequent delivery on the



grounds of a material defect to lapse fruitlessly. If only an insignificant defect is given, the Purchaser shall only be entitled to reduce the contractually agreed price. The right to reduce the contractually agreed price shall otherwise be excluded.

#### **X. General terms and conditions**

In so far as the Supplier's liability is given, irrespective of the legal grounds herefor, this liability shall be limited to a maximum of 5 % of the value of the delivery volume in concern. This limitation of liability shall not apply in the case of intent, gross negligence on the part of the owner or of an executive employee, in the case of a violation of substantial contractual obligations, if agreed properties are lacking and in cases in which a warranty is applicable for defects in the delivery item according to the product liability act for damage to persons or property in privately used objects. In such a case the economic situation of the Supplier, type, scope and duration of the business relationship, possible degree of responsibility and/or default on the part of the Purchaser in compliance with § 254 BGB (German Civil Code) and a particularly unfavourable installation situation of the delivery part shall be taken into appropriate account for the benefit of the Supplier. Compensation, costs and expenses to be borne by the Supplier have to be in an appropriate ratio to the value of the delivery item.

#### **XI. Place of fulfilment, place of venue, legal effect**

1. Place of fulfilment for the delivery and for all other contractual obligations including payment shall be Renchen.
2. The District Court of Oberkirch (Amtsgericht Oberkirch) shall be agreed as place of jurisdiction for any and all disputes, also for lawsuits on the grounds of trials of record and summary procedures on bills of exchange. The Supplier shall also be authorised to institute legal proceedings at the address of the Purchaser's headquarters.
3. The laws of the Federal Republic of Germany shall apply exclusively unless no other agreement is made.

The application of the Treaty undersigned by the United Nations on agreements concerning the international sale of goods shall be excluded.

4. In the event of an invalidity of any one or more terms stipulated herein the legal force of the remaining terms and conditions shall not be affected.



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5. These General Terms and Conditions can be downloaded from our homepage [www.wiegert-baehr.de](http://www.wiegert-baehr.de) and saved in a reproducible form.