

Terms and conditions of Sale and Supply

of Asentec GmbH – Edition January 2007

§ 1 Terms and Conditions of Sale and Supply

The following terms and conditions of sale and supply apply to all our quotations and deliveries of goods and services, including information and advice. Our terms and conditions of sale and supply also apply to all future business relationships between the customer and ourselves, even if we do not refer to them again explicitly when concluding the contract. The applicable version shall in all cases be the version which is current at the time of conclusion of the contract, we will send this to the customer upon request. Conditions other than these shall not apply, even if we do not explicitly object to them.

Drawings, illustrations, dimensions, weights or other data in brochures, memoranda, price lists or other publications or in our offer letters and/or the documents accompanying the same do not represent a warranty of characteristics or otherwise. They serve only to describe the product. They shall only be authoritative in an approximate sense.

Even subsequent to the despatch of our order acknowledgement, we shall reserve the right to make changes in construction, selection of materials, specification and design provided that such changes are in keeping with technical progress and are reasonable as to the customer.

§ 2 Prices

Unless a fixed price is explicitly agreed, the prices stated by us shall be based on our cost prices at the time of confirmation of the order. In the case of a cost increase due to increases in the price of materials or in wages, we reserve the right to charge the price prevailing at the time of delivery, should delivery take place more than four months after the date of order confirmation, provided that the customer can reasonably be expected to accept the adjustment, taking our interests into account. Should no order confirmation be issued, the date of the order shall apply.

Our prices are ex works, excluding packaging. These prices do not include the statutory value added tax. This shall be added at the prevailing rate at the time of delivery of the goods or services.

§ 3 Terms of Payment

Unless otherwise agreed in writing, all payments must be made in full, without charge, to the payee/the payee's account indicated within 30 days from the date of the invoice. A cash discount of 2% shall be granted for receipt of payment within 14 days.

The customer shall have the right to offset payments only if his counterclaims have been established by unappealable court decision, are undisputed or are acknowledged by us; furthermore, only in such cases shall the customer be entitled to assert a right of retention. No right of retention shall exist with respect to counterclaims not arising from the same legal relationship.

If, after conclusion of a contract, circumstances become known to us which render the creditworthiness of the customer doubtful, such as initiation of insolvency proceedings, slow payment, unfavourable information or delay in earlier deliveries, we shall be entitled to suspend performance of the contract until we have been provided with adequate security. Any periods for delivery of goods or services shall be extended accordingly. We shall also be entitled to make deliveries against cash on delivery. If we have already made deliveries we may demand immediate payment of our invoice. Should the customer fail to meet our demand for security within a reasonable period, we shall be entitled to rescind the contract; in such case, the customer shall have no entitlement to claim damages.

Bills of exchange and cheques shall be accepted only by way of provisional performance; payment by bill of exchange or cheque shall only be effected when the sum in question has been irrevocably credited to us by our bank. The same shall apply to payment by credit card or purchasing card. All charges for bills of exchange, cheques and discounts and all other costs in this respect shall be borne solely by the customer.

Any assignment by a customer to third parties of its claims against us shall require our explicit written consent to be valid, unless the claim is a claim for money.

§ 4 Delivery – scope of order

Deliveries are ex works Heilbronn, excluding packaging and insurance, additional VAT (value added tax) is calculated according to the valid legal amount at the time of delivery. Cost of packaging will be determined by us.

In the event of items made to specification, deviations from the ordered quantity of \square 10% shall be admissible, should this be unavoidable for technical reasons and reasonable as to the customer.

Unless firm time limits of acceptance are agreed upon, the customer has to accept the delivery item within eight days of being informed of the completion of the order.

If the customer ordered with call-forward notice, he has to call off the delivery item – all, if several items were ordered – within 12 months from the time of ordering. For development orders special terms apply.

On acceptance the customer assumes the risk, on the day of causeless refusal of acceptance, on inaction of the customer at the expiration of the deadlines or on a certain agreed upon time limit of acceptance. If it is agreed on to mail the delivery item to the customer or to a third party, then the shipper (forwarding agent, railway etc.) assumes the risk. In any event, on utilisation of the delivery item the user assumes the risk. Should we take back goods based on reasons we do not have to maintain, then the customer assumes the risk until goods are received by us.

§ 5 Time of delivery

We shall be entitled to make partial deliveries of goods and services.

Periods for the delivery of goods and services shall not commence until agreement has been reached on all details of the execution of the order and the customer has provided the information, documentation, test samples and parts to be procured by him in accordance with the contract and has made any advance payment which may be agreed. If any discrepancies are found, we shall inform the customer immediately. Should the customer be in default in respect of a payment to be made by him or an action to be taken by him, any agreed periods for the delivery of goods and services shall be suspended for the period of such delay.

Where we fail to adhere to a deadline in respect of our performance, the customer may only rescind the contract or claim damages from us where we are responsible for the delay and the customer has previously set us a reasonable grace period of at least 30 days and such grace period has elapsed without result.

Force majeure events such as war, civil strike, shortages of energy or raw materials, sabotage, strikes, legitimate lockouts, and all other interruptions of operations beyond our control or beyond the intervention of the public authorities shall absolve us from the obligation to deliver goods and services for the period of their existence, even if they occur during an existing delay. Such events shall cause delivery periods and dates to be automatically extended to an appropriate extent. This shall also apply to late or improper deliveries of goods or services by our suppliers which are beyond our control. Should such occurrences last for longer than six weeks, the customer shall be entitled to rescind the contract; the same shall apply with respect to rescission by ourselves.

§ 6 Retention of title

Delivered goods shall remain our property until payment in full has been remitted for all our claims already existing at the time the respective contract was concluded.

Should the delivered reserved goods be mixed, combined or consolidated with goods not belonging to us, the customer hereby grants us co-ownership in the amount of the invoice value of the reserved goods.

However, the customer shall be entitled to sell the goods delivered by us in the due course of business. However, the customer hereby assigns to us all of his claims on his client in the amount of the respective invoice value of our reserved goods based on the contract between the customer and us.

The customer shall be entitled to collect the claim provided that he does not default in payment. Upon our written request, however, the customer shall be obligated to inform us of his client's name, issue us with all necessary documents and to inform his client of the assignment should we collect the claim ourselves in the event of the customer's default in payment.

The customer shall not be entitled to pledge reserved goods or to assign them by way of security. He shall be obliged to inform us without delay of execution proceedings of any nature. He shall be obliged to provide us with the opportunity to file an action in opposition to execution of judgement, brought by a third party claiming title to them attached property in accordance with § 771 of the German Code of Civil Procedure (ZPO). All costs thus incurred shall be borne by the customer.

Should our property perish due to mandatory provisions of law, the customer hereby assigns to us the claim to which he is entitled against the owner in the amount of the invoice value of our reserved goods.

§ 7 Warranty

Our warranty shall be valid only if the items delivered by us are used in the appropriate fashion pursuant to our specifications. Where the basis of a defect is an unusual chemical, physical or thermal parameter as to which the customer did not alert us at the time of concluding the contract, no warranty shall apply. The same shall hold true where defects are caused by repairs or modifications undertaken by a third-party with respect to a delivered item.

Where a defect causes only negligible diminution in value and/or of the fitness of the delivered item, and/or where negligible deviations in quantity are present, no warranty shall apply.

Irrespective of a merchant's legal duties to examine and report defects, apparent defects shall be reported to us in writing within 14 days of delivery; otherwise, warranty coverage shall cease.

Upon the discovery of a defect, the customer shall send us the defective delivered item.

If a delivered item should be defective, we shall either cure the defect or, at our option, effect substitute performance. The customer shall allow us a period of at least 30 days to effect supplemental performance.

Where supplemental performance has not been successful upon expiry of such period, the customer may, pursuant to clause 7 hereof, claim damages or reimbursement of expenses, demand abatement of the purchase price, rescind the contract or – in the case of repair orders – cure the defect itself at our expense.

To the extent the customer is entitled to exercise the above-mentioned rights, the customer shall be obliged to state within 14 days of our request whether and in what manner it shall exercise such rights. Where the customer fails to make such declaration within such period or where the customer insists on supplemental performance, the customer shall not be entitled to enforce any further rights until a further period of at least 30 days has elapsed without result. Where, during the running of such further period, it becomes apparent that we shall be incapable of complying within said period, the above shall apply accordingly.

Only the customer shall be entitled to assert warranty rights. Assignment thereof to third-parties is excluded.

Costs incurred as a result of unjustified quality complaints shall be borne exclusively by the customer.

§ 8 Limitations on liability

We shall be liable for damage incurred by our customers to the full extent of law, if our managing bodies or our senior management are guilty of intentional misconduct or gross negligence. Moreover, we shall be liable in the case of infringement of material contractual obligations whose performance the customer may particularly rely on, even in cases of ordinary negligence. In the case of infringement of material contractual obligations due to ordinary negligence or in the case of intentional misconduct and gross negligence of agents who are not senior management, we shall only be liable in the amount of the typical foreseeable damage, taking all important and recognisable circumstances into account; liability for consequential damage such as foregone profits, foregone savings and other indirect damage and for recorded data is excluded.

The above limitations on liability shall include all claims for damages, irrespective of their legal grounds. However, they shall not apply with respect to damage to life, limb or health. In addition, liability under the Products Liability Act and liability under a warranty of express characteristics or durability shall be unaffected hereby.

The above restrictions on liability shall also apply in favour of our employees and other third parties engaged by ourselves.

§ 9 Hazardous working materials

Upon delivering appliances to us for repair and returns, the customer hereby undertakes to strictly observe the Ordinance on Hazardous Material as amended.

The customer shall, in particular, appropriately package and mark equipment filled with hazardous working materials or which have otherwise come in contact with such materials, and shall refer in the written repair order to the connection with hazardous working materials within the meaning of the Regulation and – to the extent such can reasonably be requested – include a safety data sheet in accordance with Regulation 91/155/EEC.

We may refuse acceptance and repair of equipment at any time and without restriction, referring to the connection with hazardous working materials, provided this equipment was not manufactured by ourselves and we do not provide warranty for it by law. Claims for damages of any kind against us are excluded.

We hereby expressly reserve the right to enforce compensation claims in respect of the failure to observe regulations on hazardous working materials.

§ 9 Copyright

Patent rights, copyrights and other intellectual property rights embodied in the goods and services supplied by us shall not be transferred to the customer. Publication of the plans, cost estimates, drawings, samples and other technical documentation generated by us shall require our prior written consent. The same shall apply if these documents are to be copied or made accessible to third parties.

Unless explicitly agreed otherwise in writing, customer-specific tools and equipment which we have purchased for the execution of an order shall remain our property even if we have charged costs to the customer for them.

§ 10 Place of Performance and Jurisdiction, applicable Law

Should the customer be a merchant, a legal entity in accordance with public law or a separate estate under public law, in the event of discrepancies arising from the contractual relationship, suit is to be filed at Heilbronn Germany. Furthermore, we shall be entitled to file suit at the location of the customer's head office.

German law shall apply to this contract, excluding the Conflicts of Laws (IPR) and the International Law on the Supply of Goods (CISG).

§ 11 Miscellaneous

If one provision of these terms and conditions and of additional agreements should be or become ineffective, this will not affect the validity of the terms and conditions in other respects. The parties shall agree upon a provision to replace the ineffective provision that reflects as closely as possible the economic intent of the previous provision.

The English version of these terms and conditions of sale shall be for convenience purposes only. In case of any inconsistencies, the German version shall prevail. (Version 01/2007)

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