

General Delivery and Performance Terms & Conditions

August 2014

1. Scope of Validity

- 1.1. The following general terms and conditions shall govern the entire business relationship between us and our customers. Amended versions of these terms and conditions shall be valid unless the customer objects to them in writing within two weeks. We will inform our customers of the significance of not objecting to amendments at the beginning of the 2-week response time.
- 1.2. Our customers' terms and conditions shall not be binding to us unless we explicitly agree to them in writing and whether or not we explicitly objected to them.
- 1.3. Amendments to these terms and conditions or agreements to the contrary require our written confirmation. Our associates are not authorised to enter into written or oral amendments to these terms and conditions or into ancillary agreements.
- 1.4. In addition to these general terms and conditions, the supplementary provisions for the licensing of software products for the industrial automation (powering, measuring, switching, controlling, monitoring) shall apply. In this context, we explicitly refer to these licensing terms and conditions.
- 1.5. These terms and conditions shall apply to relationships between us and business persons as defined by § 310 para. 1 BGB (German Civil Code).
- 1.6. Without explicit reference in every individual transaction, these General Delivery and Performance Terms and Conditions as amended shall also be valid as master agreement for future agreements with the same existing customer on the delivery of goods and chattels.
- 1.7. Individual specific agreements with a principal (including ancillary agreements and amendments) always supersede these General Delivery and Performance Terms and Conditions. For the content of such ancillary agreements and amendments to be valid they must be part of a written agreement or alternatively, we must have expressed our acceptance in writing.
- 1.8. Any and all material declarations and information to be submitted by the principal after entering into an agreement with us require the written form.

2. Offer and Order Confirmation

- 2.1. Our offers are subject to change without notice. The scope of our delivery obligation shall be defined solely by our written order confirmation.
- 2.2. The specifications relating to the sales item (such as weight, dimensions, serviceability, load capacity, tolerances, and other technical data) as well as drawings of sales items (such as images, maps, and drawings) are approximations unless the usefulness for the purpose stipulated in the agreement depends on the exact adherence to specified data. The specifications shall not be considered characteristics of state but rather descriptions or characterisations of the sales items. Deviations, which are either technical improvements or customary in the trade, and deviations based on compliance with legal provisions or standards as well as the substitution of components with equivalent ones are permissible providing they do not compromise the use for the contractually agreed purpose.

3. Copyright and Title to Drawings and Similar Property

- 3.1. We shall retain title to the drawings, sketches, designs, cost estimates, and all other documentation enclosed with our offers and order confirmations. The customer may use these materials only for the agreed purpose and shall not copy them or make them accessible to third parties without our permission. Upon our request, the customer shall return to us all these materials and all existing copies.
- 3.2. We reserve the copyright to all these materials.

4. Delivery Time and Late Delivery

- 4.1. Agreed delivery times shall only be binding if the customer provides us with the required information and documentation in due time, if the customer performs his duty to collaborate as agreed and required, and providing that the customer is not in default of payment or other material contractual duties.
- 4.2. In the event of force majeure or any other event beyond our control, such as war, mobilisation, rioting, strike, lockouts, delayed or improper supply delivery or any other serious disruption of operations, the agreed delivery times and deadlines shall be extended commensurate with the type of disruption or force majeure. In case a force majeure event delays our delivery to a customer for more than one month beyond the agreed date, both we and our customer reserve the right to withdraw from the agreement as far as the delayed delivery scope is concerned without claiming damages of any kind.
- 4.3. We reserve the right to withdraw from agreements with our customers if force majeure events or events beyond our control make our delivery impossible or unreasonable. This shall also apply if the above described disrupting events disable our operations and our work so severely that our contractual performance is no longer feasible. In the event our performance becomes unavailable we shall inform our customers immediately of this fact and shall return already received advance payments without delay.
- 4.4. We reserve the right to make partial deliveries. This shall not entitle the customer to any rights or claims. However, this shall not apply if our delivery is late and the customer is not interested in partial deliveries. Complaints pertaining to partial deliveries shall not entitle the customer to refuse the delivery of the remaining items.
- 4.5. In the event we are in delivery default and this causes damages, the customer shall have the right to claim lump sum damages for delivery default. This compensation shall be 0.5 % for every full week in delivery default but no more than a total of 5 % of the net value of the overdue part of the delivery, which is not available to the customer in due time or not available for use as contractually agreed. Section 9 of these terms and conditions apply to all further damage claims.

5. Approval and Risk Transfer

- 5.1. Unless the parties agreed on different approval periods, the customer shall accept and approve sales items within eight (8) days of being informed of their completion.
- 5.2. Unless the contracting parties agreed otherwise, all items ordered for on-demand delivery must be called within twelve (12) months of ordering.
- 5.3. The risk is transferred to the customer upon approval or the day of groundless refusal of accepting delivery. If the customer fails to respond within the agreed delivery time, the risk shall transfer to the customer upon expiration of the agreed delivery period as stipulated in the above paragraphs 5.1 and 5.2 or within a separately agreed period for the acceptance of delivery. In case the parties agreed on delivery of the ordered item by a third party carrier or delivery to a third party, the risk shall be transferred to the cargo carrier (forwarding agent, rail carrier, etc.) upon handing over the merchandise. Under all circumstances, the risk shall be transferred to the customer upon first use of the merchandise. In the event we accept the return of merchandise due to reasons not under our control, the customer shall assume the risk until we receive the merchandise.

6. Inspection upon Receiving the Merchandise

- 6.1. Immediately upon receiving the merchandise, the customer shall inspect it and determine whether he received the correct amount and type of merchandise and whether the merchandise shows obvious defects or transport damages.
- 6.2. After visual inspection, the customer shall report any apparent defects to the counter party. The principal shall also report any later discovered defects to the counter-party.
- 6.3. The customer shall have the right to notify us of defects within two (2) weeks of delivery or service or within two (2) weeks of first discovering the defect after putting the merchandise into use.

7. Prices and Payment Terms and Conditions

- 7.1. Our prices are quoted ex works without packaging plus applicable VAT at the time of delivery. We shall set the price for packaging at our discretion.
- 7.2. Invoices are due on the issue date and payable within 14 (fourteen) days of the invoice date to avoid paying default interest.
- 7.3. We reserve the right to ask customers for the submission of an irrevocable and unlimited bank guarantee in the amount of the contract price before order confirmation.
- 7.4. Prices are binding for four (4) months after receiving our order confirmation. In the event an individual cost element changes (e. g. personnel costs or hourly charge rates or verifiable costs of materials provided by third parties), we shall adjust our prices proportionally but only for affected cost elements. The resulting adjusted price shall apply starting on the first day of the calendar month following the receipt of the written notice of the price adjustment.
- 7.5. In case the parties agree on payment in instalments and no payment date is specified, every instalment shall be payable in advance on or before the third work day of the instalment period. In the event the customer is in default with more than one instalment, the entire residual invoice amount shall become due. This shall also apply if the parties agreed on instalment payments after the invoice was due. Agreements on payment in instalments after the due date shall not affect our right to charge default interest.
- 7.6. Offsetting or withholding payments against receivables by the customer shall be excluded if we dispute or do not accept the debt or if the debt is not legally enforceable or a court decision on this debt is pending. The customer shall only offset qualified payments against counter claims stemming from the same delivery agreement.
- 7.7. After entering into an agreement with a customer, information or circumstances may indicate that the customer may not be able to satisfy the agreed payment obligations. In such a case and in case the customer is in payment default, we reserve the right to perform further agreed deliveries only upon advance payment or against collateral.
- 7.8. In case the principal wishes to change an order after entering into a contract, we reserve the right to adjust the agreed prices as well as the delivery dates.

8. Retention of Title

- 8.1. We shall retain title to the merchandise delivered by us until the customer has fulfilled all his payment obligations in connection with our business relationship. Furthermore, we shall also retain title to delivered merchandise when individual receivables are included in a running account balance and the customer has accepted this balance. Customers who advise us of their status as resellers at the time of ordering shall have the right to sell the goods subject to title retention in the course of regular business transactions. However, the reseller shall not assign the merchandise to third parties or pledge it as collateral. The reseller shall secure credit to satisfy our rights to resold merchandise to which we hold title.
- 8.2. The customer agrees in advance to assign to us the full amount of all receivables from reselling delivered merchandise subject to title retention (invoice amount including VAT); we accept this assignment. The customer performs any processing of the merchandise subject to title retention for our benefit without any obligations on our part. In case the merchandise subject to title retention is processed or commingled with other objects belonging to other parties, we shall own the portion of the processed merchandise value, which is proportionate to the pro-rated value of the merchandise subject to title retention. In the event the customer acquires the sole rights to the processed merchandise, the parties mutually agree that the customer assigns to us shared property rights proportionate with the processing value and the involved merchandise subject to title retention and shall store the new item for us free of charge.
- 8.3. Subject to revocation, the customer shall have the right to collect receivables from reselling the merchandise subject to title retention. To the extent that this affects our rights, the reseller shall not assign or pledge such receivables to third parties.
- 8.4. Upon our request, the customer shall provide us with the necessary information for the collection of assigned receivables and shall inform the debtor of the assignment. In case of a levy of execution on behalf of third parties involving the merchandise subject to title retention or receivables assigned to us, the customer shall immediately inform us of such action and immediately provide us with all necessary documents for our intervention.
- 8.5. In the event the nominal or estimated value of the property value assigned to us as stipulated above exceeds 150 %, we shall release the surplus to the customer upon his/her request. It shall be at our discretion, which one of our collateral property shall be released to the customer.
- 8.6. Based on the title retention, we are able to demand the return of the delivered merchandise only after withdrawing from the agreement.

9. Non-Performance and Withdrawal from the Agreement

- 9.1. In case the customer specifies an unreasonably short period for the performance of contractual duties or remedial actions, this shall not constitute a valid performance period.
- 9.2. A breach of duty not caused by our default shall not entitle the customer to withdraw from this agreement according to §§ 323, 324 BGB (German Civil Code) unless the breach of duty entails the delivery of defective merchandise or the production of defective goods.
- 9.3. After expiration of the grace period for providing a remedy, the customer shall have the right to withdraw from the agreement only after a reasonable period. Furthermore, the withdrawal from the agreement shall be excluded if the customer accepts our remedial performance after the grace period.
- 9.4. From the time the customer knows or is negligently unaware of the existing withdrawal, the customer shall pay compensation for the lost value of returnable performance.

10. Liability

- 10.1. Damage claims of any kind, i. e. damages not affecting the delivered merchandise, shall be valid only
 - if they are based on the wilful breach of duty on our part
 - if they are due to the wilful or grossly negligent breach of duty on our part or on the part of one of our legal agents or vicarious agents
 - if they involve damage to health, life and limb due to simple negligence on our part or due to the wilful or negligent breach of duty by one of our legal representatives or vicarious agents
 - if they are caused by the culpable breach of material contractual duties to the extent to which this jeopardises the purpose of the agreement due to typical foreseeable damages
 - if we are liable for personal injury or property damage to privately used items due to the delivery of defective merchandise according to the German Law on Product Liability [ProdHG]
 - in case defects are maliciously concealed or in case the absence of specific defects was guaranteed
- 10.2. We shall be liable for personal damage for which we are responsible as stipulated by German law; in case of property damage for which we are responsible, we shall compensate the counter-party for sustained damages up to 50 % of the value of the order item per damage event, however no more than the total of the order value. Claims relating to events such as production downtimes, production loss or lost profits shall be excluded.
- 10.3. Any further claims by the principal shall be excluded regardless of the legal grounds, provided no statutory liability exists, such as liability due to damages to privately used items

- or intentional damages, gross negligence or due to the absence of guaranteed characteristics. Our liability shall end with the expiration of the warranty period.
- 11. Liability for Defects**
- 11.1. We reserve the right to charge a processing fee for every customer-induced inspection of a delivered device if the defect reported by the customer did not exist and this should have been apparent to the customer.
- 11.2. Liability for defects is excluded under the following circumstances:
 Unsuitable or improper use, faulty installation or launch by the customer or third parties, non-compliance with our operating instructions, faulty, improper or neglectful use, natural wear and tear, chemical, electrochemical or electrical impact providing these are not related to gross negligence on our part, and modifications or repairs without our prior approval. These exclusions do not apply to the circumstances specified above in section 9.
- 11.3. Our consultations with the customer, in particular consultations regarding the use of the delivered merchandise, shall be considered authoritative only if they are in writing or after we confirmed oral consultations in writing. We shall be liable for the suitability of merchandise for a specific purpose only if we have explicitly guaranteed this suitability in writing.
- 11.4. In case of repair and maintenance services, the warranty claims of our customers shall be limited to the ordered and executed services. This exclusion does not apply to the circumstances specified in section 9.
- 11.5. At our discretion, we shall replace defective items or remedy defects free of charge if such defects relate to circumstances, which existed before the risk transfer.
- 11.6. Unless the parties agree otherwise, our domestic deliveries shall be free of third party property rights or copyrights. If a property rights infringement occurs despite our best efforts to avoid it, we shall either acquire the respective license from the third party or modify the delivered item in such a way that a property rights infringement no longer exists. Should the above described course of action not be feasible under just and reasonable conditions, both parties reserve the right to withdraw from the agreement.
- 11.7. To all other legal defects the provisions in sections 9. and this section shall apply accordingly; the customer shall claim legal defects only under the following circumstances: The customer immediately informs us in writing of third party infringement claims; the customer neither directly nor indirectly accepts third party infringement claims; our unlimited defence against the infringement claim is unencumbered; the infringement does not rest on the fact that the customer has modified the delivered item or used it in ways not covered in the agreement; the legal defect is attributable to a directive by the customer.
- 12. Statute of Limitation**
- 12.1. All damage claims against us made by business persons, legal entities, corporate entities under public law or by special funds under public law shall be statute-barred starting one year after delivery of the merchandise or plant inspection and approval unless the underlying cause involves
- wilful breach of duty
 - regress claims made by the customer according to § 478 BGB (German Civil Code)
 - our guarantee for the specific characteristics of goods or
 - malicious concealment of a defect
- 12.2. In contrast to the provision on the statute of limitation according to section 1, the statutory provision regarding the statute of limitation applies to all damage claims made against us by business persons, legal entities under public law and special funds under public law if the claim involves
- a building or plant dedicated to delivering planning and monitoring services
 - a plant not involved in manufacturing, maintaining or modifying items or providing planning or monitoring services and
 - a commercial product, which was and is customarily used in construction work thereby causing a construction defect.
- The statutory provisions on the statute of limitation also apply when
- according to jus in rem a third party is entitled to pursue the handover of the sales item or
 - otherwise property rights exist according to entries in the cadastral registry
- 13. Assembly and Service**
- 13.1. Unless agreed otherwise in writing, the customer shall compensate us for assembly work and service in the form of supervisory, repair, and maintenance services. In particular, the compensation shall cover travel costs, daily allowances as well as the usual rates for work hours and surcharges for overtime, night, Sunday, and holiday work hours, for work under difficult conditions as well as charges for planning and monitoring.
- 13.2. The costs of preparation, travel, and waiting times shall be charged extra. In case the assembly/installation is delayed without fault on our part, the customer shall bear the costs of the waiting time and additional required travel.
- 13.3. The customer shall provide the required support personnel and assembly tools at his/her expense. Furthermore, the customer shall provide sufficient space for machine parts, fittings, materials, tools etc., which is suitable (dry and lockable) for this purpose. For the protection of our assembly and service personnel and for our property the customer shall provide the same security, which is in place for his/her own staff and property. In case the customer's operations or environment require special protective garb or gear, the customer shall provide such garb and gear for our assembly and service personnel as well.
- 13.4. Our assembly personnel and our vicarious agents are not authorised to perform work, which is not related to fulfilling our delivery duties in context with the installation and the assembly of delivered items; our service personnel shall not be asked and is not authorised to perform work prompted by the customer or third parties without our prior authorisation. We shall not assume liability for work performed outside our range of responsibilities.
- 13.5. In the event the customer or a third party authorised by the customer performs the assembly, the assembly personnel shall comply with our updated assembly and operating instructions.
- 13.6. Based on our technical expertise and experience, we shall decide at our discretion whether services (repair and maintenance services) shall be performed on site or in our facility. In case the service is to be performed on our premises, the customer shall send the item to us. After completion of the service work, we shall send the item back to the customer. The customer shall bear the transport costs as well as the risk of loss or damage.
- 13.7. Providing the customer did not modify the item, the serviced item shall be returned to the customer in its standard configuration. In case the customer informs us of modified settings and programming, we shall configure and program the item accordingly in the course of servicing it. However, the customer shall be responsible for checking these settings. We shall not assume liability for settings modified by the customer. Furthermore, we shall not assume responsibility for the proper performance of our product after integration in other equipment.
- 13.8. Our service technician is authorised to service parts other than the ones delivered by us only based on an explicit additional order for the respective services by the customer and only if a quick and simple solution is expected.
- 13.9. Our technician may abandon this service upon realising that no remedy can be provided within the anticipated short time frame. Even then, the customer shall be obligated to compensate us for the service time in connection with performing the additional customer order. The customer shall not be obliged to pay for additional but abandoned service work if according to expert opinion the technician could have performed the additional customer order within the anticipated short time and gross negligently did not realise this or wilfully abandoned the additional service task.
- 13.10. The customer shall be obligated to determine whether issuing an additional service order may jeopardise or void delivery and/or maintenance contracts between the customer and third parties. We shall not assume liability for such possible interference with third party contracts.
- 14. Environmental Compatibility, Hazardous Goods**
- 14.1. When returning items or sending items to us for repair and maintenance work the customer shall strictly comply with the German Hazardous Substances Ordinance as amended. Devices delivered to us must be in clean condition, and a valid decontamination certificate must be attached to them.
- 14.2. In particular, the customer shall package and label devices, which come into contact with, contain or are filled with hazardous materials, in compliance with the respective legal provisions and regulations. Furthermore, the customer shall explicitly advise us in his/her service order when sent devices contain or had contact with hazardous materials as defined by the German Ordinance on Hazardous Materials; if required the customer shall include a material safety data sheet according to EU Directive 91/155/EC.
- 14.3. We reserve the right to refuse service orders based on the exposure of the respective device(s) to hazardous materials, unless we manufactured the device and are still obligated to provide service under warranty.
- 14.4. We reserve the right to claim damages based on the customer's non-compliance with the German Ordinance on Hazardous Materials. This shall not apply if the customer is not responsible for the breach of duty.
- 15. Legal Venue, Place of Fulfilment, and Concluding Provisions**
- 15.1. For business persons, legal entities under public law and special funds under public law the place of fulfilment for deliveries and payments shall be our headquarters in Berlin. For all disputes resulting from this contract the legal venue shall be Berlin (Germany).
- 15.2. The laws of the Federal Republic of Germany shall govern the applicability and interpretation of these general business terms and conditions and all legal issues between the parties exclusively. The laws of the Federal Republic of Germany shall apply to all legal disputes between the parties and to these General Service and Performance Terms and Conditions exclusively. We explicitly exclude the application of the UN Sales Convention (CISG).
- 15.3. Amendments to these General Delivery and Performance Terms and Conditions shall require the written form.
- 15.4. Should any provisions within these General Delivery and Performance Terms and Conditions be or become invalid this shall not affect the validity of the remaining provisions. The parties agree to replace invalid provisions with such new valid provisions, which most closely convey the economic purpose of the original provisions. The written form requirement shall also apply to amendments of the written form provision.
- 16. Proviso**
- 16.1. Our fulfilment of contractual obligations shall be subject to the proviso that the fulfilment is not impeded by national or international law or trade regulations, embargoes or other sanctions.
- 17. Supplementary Provisions**
- 17.1. German statutory provisions shall apply in the absence of an applicable provision in these General Delivery and Performance Terms and Conditions.