

# STANDARD TERMS AND CONDITIONS OF PAYMENT AND DELIVERY

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### PROFIL Verbindungstechnik GmbH & Co. KG

#### 1. Order

We shall deliver only pursuant to the terms and conditions of payment and delivery set forth below. The purchase agreement shall be formed upon receipt of the Seller's order confirmation by the Purchaser. Should the Purchaser's order be based on different standard terms and conditions, such terms and conditions shall apply only if confirmed in writing by the Seller.

#### 2. Prices

The stated prices shall apply to deliveries ex works.

#### 3. Payments

Payments shall be made net and without any deductions within 30 days of the invoicing date. Payments shall always be used to settle the longest outstanding debt payable plus any default interest incurred thereon and any costs for bringing legal action. Cheques shall be accepted only as provisional payment and shall never be accepted as a substitute for payment. With issue of a cheque, ownership of the cheque shall also pass to the Seller. The Purchaser shall bear the costs for collection. Should payments be delayed or made later than agreed, interest shall be charged in an amount 8 Percentage points above the base interest rate pursuant to § 1 of the Discount Rate Transition Act (Diskontsatz-Überleitungsgesetz) without the need for any reminder notice.

In the event of default in payment by the Purchaser, the Seller may, after setting a grace period, rescind the agreement and repossess the goods. In this event, the Purchaser shall assign to the Seller any claims for possession that have arisen against third parties.

#### 4. Delivery Time

The order confirmation shall be the governing document in relation to the nature and scope of the delivery. Delivery dates shall be stated to the best of the Seller's knowledge. The delivery deadline shall commence upon issue of the order confirmation, but not before the party placing the order has provided the documents, permits, and authorisations to be procured by the party placing the order, or prior to receipt of any agreed down payment, provided such down payment is to be made directly after conclusion of the agreement. Should the Seller not receive delivery or not receive delivery in good time from its own supplier despite conclusion of a matching hedging transaction, without such supplier being entitled to do so, and the Purchaser would not be able to perform the agreement in good time due to the delayed delivery by its supplier or would be able to do so only subject to significant difficulties, then the Seller may rescind the agreement with the Purchaser. This shall also apply to individual items from a single order, unless the Purchaser proves that it has no interest in a partial delivery. In the event of strikes, lockouts (also in relation to suppliers and the Seller's own suppliers) and other cases of force majeure, the delivery time shall be extended accordingly. Partial deliveries may be made. Should the delivery no longer be required by the Purchaser due to the delay, it may rescind the agreement. In this event, the Purchaser shall have no compensatory damages claims. In the event of default, the Purchaser may rescind the agreement after expiry of a reasonable grace period, provided that prior to expiry of such grace period no notice has been given that the goods are ready for shipment. The grace period shall commence only upon receipt of the Purchaser's written notice setting such grace period. A compensatory damages claim for non-performance that may, at the Purchaser's choice, be asserted instead of rescinding the agreement shall lie only if the cause of the default is based at least on grossly negligent conduct by the Seller or if the Seller proves that it is liable for compensatory damages claims due to the Purchaser's default. In the latter case, the compensatory damages claim shall be limited to damages typical for the agreement and foreseeable damages. The compensatory damages claim shall also be limited to damages typical for the agreement and foreseeable damages if the default is caused as a result of gross negligence by simple vicarious agents.

#### 5. Shipment

Unless otherwise agreed, shipment shall be effected for the Purchaser's account. Risk shall pass to the Purchaser upon shipment ex works. The goods shall be insured against transport damage only if ordered by the Purchaser and at the Purchaser's expense.

#### 6. Material Defects and Defects-related Complaints

We shall be liable as follows for material defects:

- 6.1 Should a product delivered by us manifest a material defect within the limitations period - without taking into account the term of operation - we shall, at our choice, repair the defect or deliver a faultless product, provided that the cause of the material defect already existed upon the passing of risk.
- 6.2 Should we choose to correct the defect (repair), the Purchaser shall, in co-ordination with us, give us the opportunity to correct the defect within a reasonable period.
- 6.3 Should the subsequent performance fail, in principle the Purchaser may at its choice rescind the Agreement, reduce the purchase price, or demand reimbursement of its expenses. Any compensatory damages claims shall remain unaffected thereby. However, should a duty have been violated only to a minor extent, in particular, in the event of minor defects only, the Purchaser shall not have any right of rescission.
- 6.4 Any claims based on material defects shall become statute barred in twelve months. This period shall commence upon delivery of the goods. The foregoing sentence 1 shall not apply insofar as longer periods are statutorily prescribed pursuant to §§ 438 (1) no. 2 (Items for Buildings), 479 (1) (Right of Recourse) and 634 a (Construction Defects) of the German Civil Code („BGB“).
- 6.5 The Purchaser shall provide written notice of material defects within a period of two weeks following delivery of the goods. In the case of latent defects, such notice must be provided within two weeks of discovery thereof. Otherwise, the assertion of any liability based on material defects shall be excluded. The deadline shall be deemed been adhered to provided that the relevant notice is sent in good time. The Purchaser shall bear the full burden of proof for all claim requirements, in particular, for the defect itself, for the date of discovery of the defect, and for timeliness of the complaint.
- 6.6 In the event of complaints, the Purchaser may withhold payments that are reasonably proportional to the quality defects that have arisen. The Purchaser may, however, withhold payments only if it has properly complained about the defects in accordance with the foregoing Section 6.5 and there can be no doubt as to the legitimacy of the material defect. Should a complaint be made incorrectly, we may demand from the Purchaser compensation for any expenses incurred by us.
- 6.7 There shall be no defect-related claims in the event of only minor deviations from the agreed quality, in the event of only a minor impairment to usefulness, or in the event of natural wear and tear or in the event of damage that arises following the passing of risk as a result of incorrect or negligent handling, excessive use, unsuitable operating materials, independent repair work or special external influences not stipulated in the Agreement. Should the Purchaser or third party conduct unprofessional modifications or repair work, there shall be no defect-related claims in relation to such modifications or work and any resulting consequences.

6.8 Any claims by the Purchaser based on the expenses necessary for subsequent performance, in particular, transportation, infrastructure, work and material costs shall be excluded, provided such expenses are increased due to the subject matter of the delivery being subsequently shipped to a location other than the Purchaser's branch, unless such shipment conforms with use of the item as provided under the relevant agreement.

6.9 Section 7 below shall also apply to any compensatory damages claims. Any additional claims or claims other than those governed in this Section 6 on the part of the Purchaser against us and our vicarious agents based on material defects shall be excluded.

#### 7. Liability

- 7.1 We shall be fully liable for any damage that results from our own gross negligence or the gross negligence of our executive employees as well as in the event of infringement of material contractual duties.
- 7.2 In the event of violations of contractual duties due to minor negligence, our liability shall be restricted to the foreseeable, contractually typical, direct average damage in light of the type of goods. This shall also apply in the event of violations of contractual duties due to minor negligence on the part of our statutory representatives, executive employees and vicarious agents. Any liability on our part for damage due to violation of immaterial contractual duties due to minor negligence shall be excluded.
- 7.3 Any additional claims on the part of the Purchaser other than those set forth in these terms and conditions of delivery and payment, above all, for consequential damages and lost profits, shall be excluded to the extent permitted under statute. The exclusion of liability shall not apply in the event of intent or gross negligence by us or our executive employees, or in the event that the consequential damage and the lost profit forms part of contractually typical damage for which we are liable under Section 7.2 above. This provision shall not apply in the event of a violation of a material contractual duty.
- 7.4 The foregoing limitations of liability shall not apply to claims by the Customer based on product liability. Moreover, the limitations of liability shall not apply to physical and health-related damage attributable to the Seller or to loss of life on the part of the Purchaser.

#### 8. Retention of Title

- a) We shall retain title in all delivered goods until payment of all our receivables under the business relationship. This shall apply even if the purchase price for certain deliveries of goods is paid by the party placing the order, for in this event the retention of title shall serve as security for our balance of receivables (Saldoforderungen).
- b) Processing or alteration of goods subject to retention of title by the purchaser is always done in our name.
- c) If goods subject to retention of title are processed together with other goods not owned by us, we shall acquire co-ownership in the new product in proportion to the value of the goods subject to retention of title (final invoice amount including turnover tax) to the other processed goods at the time of processing.  
If the goods subject to retention of title are inseparably compounded or mixed with other goods subject to retention of title, we shall acquire co-ownership in the new product in proportion to the value of the goods subject to retention of title (final invoice amount including turnover tax) to the other compounded or mixed goods at the time of compounding or mixing. If the goods subject to retention of title are compounded or mixed in such a way that goods of the purchaser may be considered as being the principal product, we agree with the purchaser in advance, that the purchaser shall transfer proportionate co-ownership in the new product to us. We hereby accept this transfer. Such sole ownership or co-ownership in a product shall be maintained for us by the purchaser free of charge.
- d) The goods delivered by us may be resold in the ordinary course of business by the party placing the order, provided it is not in default. The goods subject to the retention of title may not be pledged or transferred by way of security.
- e) The Seller hereby assigns to us by way of security all receivables resulting from resale or any other legal grounds in relation to the goods subject to the retention of title. This assignment of receivables shall also cover any and all of the Purchaser's receivables in relation to the closing balance of any current account agreed between the Seller and its customers. We hereby accept this transfer
- f) Upon request, the Seller shall disclose any assignment of receivables and provide any desired information concerning the receivables assigned to us by submitting the relevant receipts.
- g) We authorise the Seller to collect for our account and in its own interest the receivables assigned to us. Such authorisation may be revoked only if the Seller does not properly meet its payment obligations. The authorisation shall expire if insolvency proceedings are commenced over the assets of the Seller or if an insolvency petition is filed against it. The Purchaser shall promptly pass on to the Seller any amounts collected for the Seller, insofar as the Seller's receivables are due and payable.
- h) Should the value of our security (including the requirements) exceed our receivables by 20%, we shall, at the request of the party placing the order, release the security exceeding such percentage, with the selection of such security to be at our discretion.

#### 9. Costs for Technical Advice

Any costs incurred for technical advice that no longer fall within the scope of general customer advice, e.g. our review of design drafts of the Purchaser and start-up of the tools manufactured by the Purchaser shall be borne by the Purchaser together with any travel expenses.

#### 10. Industrial Property Rights

Should the purchase agreement relate to an installation that is not protected under patent law but that will employ processes of the Seller protected under patent law, the Purchaser shall not in case of doubt acquire by virtue of delivery any right to perform the protected process. Prerequisite therefore shall be additional conclusion of a licence agreement for consideration. In relation to the Purchaser, such licence shall apply to the extent that solely functional elements and, where applicable, ancillary elements are used to employ the protected process, where such elements were previously properly acquired from the Seller.

#### 11. Place of Performance and Forum

Place of performance and forum is Bad Homburg v.d.H.

#### 12. Applicable Law

Only the law of the Federal Republic of Germany shall apply. Application of the United Nations' Convention on International Sale of Goods is excluded.

#### 13. Severability

Should individual provisions of this Agreement be invalid, the validity of the remaining provisions shall remain unaffected thereby. The invalid provisions shall be replaced by valid provisions that most closely reflect the intent and purpose of the invalid provision.