General Terms of Delivery

Ingenieurbüro Bickele & Bühler GmbH

- for use during the normal course of business -

I. General Provisions

1. All mutual, written agreements between Ingenieurbüro Bickele & Bühler GmbH (hereafter: „the manufacturer“) and its customer companies (hereafter: „the client“) will serve to supplement the provisions of the General Terms of Delivery found in this document; terms which apply to all of the deliveries performed and services provided (hereafter: „deliveries“) during the manufacturer's normal course of business. Unless agreed upon by the manufacturer in writing, any of a client's practices or terms of delivery that contradict the following General Terms of Delivery, or the afore-mentioned written agreements, have no standing and are not legally valid.

2. Concerning all manufacturer-generated cost estimates, design plans, or other documents (hereafter: „documents“), the manufacturer will maintain its full rights of authorship (intellectual property) and ownership (copyright). Said documents can be shown to or shared with third parties only with the manufacturer's express written permission and, in the eventual absence of a relevant purchase order from the client, must be returned to the manufacturer promptly upon demand. These initial two provisions (Article I Sections 1 & 2) also apply to any relevant documents generated by the client; documents which the manufacturer may show to or share with third parties to whom the client has allowed the manufacturer to previously or imminently deliver.

3. Partial deliveries are allowed to a reasonable degree, are to be paid for separately, and are to be considered independent fulfillments of autonomous contracts. If a partial delivery attains default status due to lack of payment, the manufacturer has the right to cancel all outstanding portions of the relevant original contract.

II. Prices and Conditions of Payment

1. As a matter of principle, the manufacturer's prices do not include packaging costs, shipping costs, or relevant applicable statutory sales taxes. The amount of said sales taxes will be separately designated in each payment invoice.

2. All payments shall be made in full and in a timely manner, and be free of any deductions or transaction charges, to the bank account designated by the manufacturer.

III. Compensation Particulars and Right of Refusal

1. In the event that a client acount goes into default, the manufacturer is entitled to certain counterclaims – including the balancing of the open account via a fair exchange of currency, or the balancing of the open account via the dissolution of other open accounts involving the client.

2. The client can only engage similar claims for restitution when said claims are undisputed by the manufacturer, or when said claims have been established as legally binding via court order. The exercise of a possesory lien by the client is only allowed when said counterclaim(s) is based on a specifically relevant contractual provision(s).

IV. Retention of Proprietary Rights

1. All delivered items remain the property of the manufacturer until the client has fulfilled all agreed upon obligations of the relevant contract.

2. As long as the manufacturer retains its ownership of the delivered items, the client is forbidden from using the same as collateral, is forbidden from using the same as goods for barter, and is forbidden from reselling the same, unless said resale is directly paid for in full by the client's customer(s), or when the client transfers said goods to said customer(s) only after having received such full payment.

3. In the case of any collateral seizure, levy of execution, garnishment, court-ordered disposal, or other third-party confiscation of manufacturer-delivered goods, the client is obligated to promptly inform the manufacturer of the same, and is also required to provide the manufacturer with any and all information and/or documents that might be required to help establish the manufacturer's inculpability in said matter. In such instances, the client is additionally required to inform any collection and/or enforcement officials as to the manufacturer's continued ownership of the goods to be siezed. Insofar as a third party is unable to reimburse the judicial and non-judicial costs of a lawsuit related to such matters (according to § 771 ZPO), the client guarantees to cover the manufacturer's costs accrued as a result. This provision is subject to the enforcement of any further claims made due to damages to, changes in, or the destruction of the relevant goods.

4. In the case of a breach of any essential contract obligation(s) by the client (especially those related to default of payment) – including ignoring or rejecting any or all demand note(s) from the manufacturer regarding overdue payment(s), the manufacturer is entitled to a return shipment of the relevant goods. In such an instance, the client is obligated to affirm said demand by promptly returning said goods to the manufacturer. Except where the manufacturer has expressly declared otherwise, in cases involving such a return of goods (or in cases involving the enforcement of the manufacturer's retention of its property rights, or in cases involving the collateral seizure of the goods in question by the manufacturer), the original contract remains enforceable.

V. Deadlines for Delivery and Default

1. The adherence to agreed upon delivery deadlines depends in large part upon timely access by the manufacturer to various documents provided by the client, including necessary software clearances and hardware authorizations (especially thoes related to manufacturer-generated production plans), as well as those related to other previously agreed upon responsibilities of the client (including those related to the client's terms of payment). If said documents are not provided in a timely manner, delivery deadlines will be appropriately extended. Such an extension will not be granted when the manufacturer is either deliberately or via gross negligence responsible for said delay.

2. If the failure to comply with delivery deadlines is due to extreme external circumstances (e.g. war, civil commotion, work-stoppage due to strike, employee lock-out, domestic regulations precluding export, or increased trade restrictions due to a shift in international political relationships), delivery deadlines will be extended appropriately.

3. In all cases of late delivery, claims for damages by the client are barred, even those claims pertaining to deliveries arriving after the expiration of any relevant grace period. This preclusion does not apply in cases involving deliberate failure or extreme negligence of the manufacturer; where an alteration of the burden of proof to the disadvantage of the client does not come to bear. The right of the client to cancel a delivery agreement, and withdraw from the same after the fruitless conclusion of a manufacturer-established grace period, remains intact.

VI. Transfer of Risk

1. The assumption of risk related to the incurrence of material damage to the objects of any contractual relationship (i.e. the goods delivered or the good to be delivered), including those damages incurred during freight-paid deliveries, is transferred to the client in the following cases:

   a) ... during deliveries not involving assembly or construction, when said deliveries are shipped by the manufacturer to the client, or when said deliveries are collected at the place of manufacture by the client. In essence, in normal cases, the assumption of risk transfers to the client as soon as the products in question leave their place of manufacture. Deliveries will be insured against standard transportation liability upon demand of the client and at the client's expense.

   b) ... during deliveries involving assembly or construction, on the day of their arrival at the client's place of business or, if agreed upon beforehand, on a day thereafter – subsequent to the goods in question having successfully completed a comprehensive operations test -- one either performed by the manufacturer, witnessed by the manufacturer, or approved by the manufacturer.

2. When the shipping, delivery, initial inception, implementation of any relevant product assembly or construction, transfer into the client's company, or client-requested operations test is delayed due to the action(s) of the client, or when the client defaults in receiving the relevant goods for any other reason(s), the assumption of risk for any incurred material damages is transferred to the client.

VII. Reception of Delivery

All deliveries are to be accepted by the client, even if they evidence minor deficiencies.

VIII. Warranty

For deficiencies involving the omission by the manufacturer of promised specifications or requirements, the manufacturer is liable under the following conditions:

1. The client must inspect the quantity and quality of each received delivery. Obvious deficiencies must be reported in writing to the manufacturer within ten (10) days of receiving each delivery. For non-obvious deficiencies, this

ten-day time period commences at the time the deficiency is first noticed by the client.

2. According to the preferred choice of the manufacturer, all deficient parts and/or services are to be either repaired free of charge, redelivered, or otherwsie indemnified (i.e. „made new"). This measure is to be effectuated by the manufacturer in order to bring the usability of the goods in question back into alignment with the originally required contractual obligations, regardless of the time and effort required to do so, as long as the assumption of risk has not transferred to the client, and as long as the damages sustained by the client are more than minimal.

3. The statute of limitations related to the rights and requirements of delivery deficiencies is one year, measured from the date of delivery of the goods in question. In cases involving warranties of immovable objects (§ 438 I Nr. 1 BGB), materials used in construction projects (§ 438 I Nr. 2 BGB), the general right of recourse for businesses (§ 479 BGB), or construction projects designed to provide planning services (§ 634 a I Nr. 2 BGB), the legally applicable statute of limitations is 20 years, five years, two years, and five years, respectively. As a general rule, the one-year statute of limitations mentioned in the first sentence of this section (Atricle VIII, Section 3) is binding on all claims related to compensating harms caused by manufacturer defects or failures, insofar as said claims do not stem from illegal activities by the manufacturer, and insofar as the claims are not based in actions of the manufacturer that are harmful to life, limb or health.

4. Regarding complaints of defective service made by the client, payments from the client may be withheld in an amount proportionate to the perceived deficiency. If the contract relates to trading activities of a standard reseller, the client can withhold payment only when there is no dispute as to the existence and the significance of the perceived deficiency.

5. As far as remedying deficiencies is concerned, the manufacturer is allowed an appropiate amount of time and opportunity to do so. If the manufacturer is denied the opportunity to rectify the deficiency, the manufacturer thereby becomes exempt from doing so.

6. When the manufacturer allows an allotted grace period to expire without correcting a relevant deficiency, the client is allowed to either cancel the contract (annulment) or demand a lessening of the contractualy required compensation (mitigation).

7. The warranty does not cover normal wear & tear of the delivered goods, usage of said goods that is either incorrect or negligent, usage of said goods that involves extreme demands placed upon the same, usage of said goods that involves inappropriate equipment, usage of said goods involving defective construction thereof, usage of said goods on an inappropriate foundation or in an area where contractually impermissable external influences are present, or software errors that are not reproduceable. If improper alterations or faulty maintenance is conducted by either the client or a third partty, the warranty becomes null and void.

8. Valid claims for contractual damages exist neither for aberrations that are immaterial to the agreed upon contractual conditions, nor for other adverse effects that are insignificant related to the overall usability of the goods in question.

9. All additional warranty claims of the client against the manufacturer or any of the manufacturer's vicarious agents are barred. Article XI of this document (Additional Liability), however, remains intact.

IX. Copyright and Intellectual Property Rights

1. If a third party brings a justified claim for infringement of either a copyright or an intellectual property right (hereafter: „IPR") against the client due to a product contractually supplied to the client by the manufacturer, the manufacturer shall be liable to the client as follows:

   a) The manufacturer will, at its option and at its own expense, either grant the client the right to use the product, alter the product so that the relevant IPR is no longer infringed, or replace the product in question. If none of these options are materially or economically feasible, the manufacturer has the right to the return of the relevant product(s), in exchange for a full refund of the original purchase costs to the client.

   b) The previously named obligations of the manufacturer exist only in such cases when the client promptly notifies the manufacturer of said third party IPR claims in writing, when the client attributes no fault to the manufacturer for said claims, and when the client preserves all of the manufacturer's original legal defenses and settlement options. In cases where the client ceases to use the product in question, either to reduce the relevant potential IPR damages or for other reasonable reasons, the client is obligated to inform the relevant third party in such a manner as to not infer the manufacturer's responsibility for the perceived infringement.

2. To the extent that the client is responsible for the relevant IPR infringement(s), he is excluded from bringing a legal action against the manufacturer regarding the same.

3. Claims made by the client shall also be excluded in the event that the infringement is caused by specifications required by the client (e.g. diagrams, illustrations, models or other descriptions or classifications that are similar to the relevant perceived infringement), is caused by a use of the product in question that is not foreseeable by the manufacturer, is caused by a modification of the product in question made by the client, or is caused by combining the product in question with other products not delivered by the manufacturer.

4. All further IPR claims against the manufacturer are banned, though Article XI of this document (Additional Liability) remains intact, as do the general rights of the client related to the rescinding of contracts.

X. Impossibility and Contract Accomodation

1. If the manufacturer cannot fulfill a delivery obligation(s) due to either intentional refusal or gross negligence, the client has the right to claim compensation for said failure. In cases of gross negligence, when none of the aforementioned exceptions exist (listed in Article V Section 2 of this document), the manufacturer's liability is limited to damages that are foreseeable relative to a contract typical to the one in question. Otherwise, damage claims against the manufacturer are limited to ten percent (10%) of the worth of the portion of the delivery that, due to the relevant lack of performance, cannot be conveniently utilized by the client. All further claims by the client against the manufacture for failure of delivery are excluded. This last does not apply to court-acknowledged culpability resulting from the manufacturer's intentional refusal to deliver, the manufacturer's gross negligence, the manufacturer's fundamental incapacity to perform, or in cases involving injury to life, limb or health, where an alteration of the burden of proof to the disadvantage of the client does not come to bear. As a general matter, the client's rights related to the rescinding of the contract remain unaffected.

2. In the case of unforeseeable events of economic importance such as those listed in Artcile V Section 2 of this document, or in the case of unforeseeable events that materially alter the content of the delivery, or in the case of unforeseeable events that significantly alter the normal business operations of the manufacturer, the contract will be accordingly adjusted in good faith. If such an alteration is not economically viable for the manufacturer, the manufacturer has the right to cancel the contract. After realizing said repercussions, if the manufacturer indeed chooses to exercise such a right of withdrawal, the manufacturer shall promptly notify the client of the same, and he will do so even if an originally agreed upon extension must be reevaluated or additionally prolonged.

XI. Additional Liability

As a general rule, claims for damages made by the client, regardless of their legal reasoning – especially those dealing with positive violations of contractual duties (i.e. damages sustained as a result of the act(s) of fulfilling the contract, not from a violation of the contract itself), those dealing with duties breached during contract negotiations, and those dealing with any general torts – are barred. This preclusion does not apply to cases involving potential infringements of the Product Liability Act, or in cases involving a court-acknowledged culpability of the manufacturer's intentional failure to comply, the manufacturer's gross negligence, the manufacturer's omission of guaranteed goods or services, or a breach of any essential elements of the contract. Even in such instances, however, damages for the breach of any essential contract obligations are limited to those which are foreseeable relative to a contract typical to the one in question. This limitation does not apply to cases involving the manufacturer's intentional refusal to deliver, the manufacturer's gross negligence, or in cases involving willful injury to life, limb or health, where an alteration of the burden of proof to the disadvantage of the client does not come to bear.

XII. Jurisdiction, et al

1. The sole place of jurisdiction for all disputes arising either directly or indirectly from the contractual relationship between the parties will be decided by the manufacturer or the business headquarters of the manufacturer.

2. Regarding the contractual relationship between the parties, German law is binding, with the exception of matters relevant to the Convention of the United Nations related to Contracts for the International Sale of Goods (CISG).

3. The manufacturer stipulates that all information pursuant to the Federal Data Protection Act arising from the fulfillment of the contractual relationship will be preserved by the manufacturer.

XIII. Binding Nature of the Contract

Even if individual portions of the contract are deemed by court order to be invalid, the remaining portions of the contract will continue to be binding on both parties. In such instances, the provisions deemed invalid shall be reinterpretted in such a manner so that their originally intended economic purpose can thereafter be fulfilled.