

AMA Verband für Sensorik und Messtechnik e.V.  
(AMA Association for Sensors and Measurement)

## Standard Terms and Conditions for the Supply of Sensor and Measuring Technology

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(Non-binding recommendation of AMA Verband für Sensorik und Messtechnik e.V.  
AMA members are free to use the recommended terms and conditions)

### **1. SCOPE**

- 1.1 Unless expressly agreed otherwise, the following Terms and Conditions of Supply ("Terms and Conditions") will apply to corporate customers ("Customer"). During an ongoing business relationship, the Terms and Conditions shall apply even if not expressly referred to by the supplier ("Supplier").
- 1.2 Separate conditions will apply to sales of precious metals and to repair and assembly work.
- 1.3 Supplier hereby expressly rejects all terms and conditions of Customer.

### **2. OFFERINGS, DOCUMENTATION, INDUSTRIAL PROPERTY RIGHTS**

- 2.1 Unless expressly specified as binding, offerings made by Supplier in sales documents, catalogues or on the internet are subject to Supplier's confirmation and are merely invitations to treat.
- 2.2 All technical data, specifications of the materials used etc. are approximations used in the industry, unless Supplier's offer documents expressly state that they are binding. If Supplier makes changes to the production method or the product itself that have no influence on the adherence to the approximations used in the industry, Supplier will inform Customer only if such change affects a warranted quality.
- 2.3 All documents provided by Supplier to Customer will remain the property of Supplier; they must not be made accessible to third parties without the prior written consent of Supplier and, if no order is placed with Supplier, must be returned in their entirety at the request of Supplier, including any copies made thereof.
- 2.4 Before accepting and using a product supplied, Customer shall check product specifications in catalogues, brochures and other written documents or on the internet for their fitness for the intended purpose. This also applies to the choice of suitable

materials. It is Customer's responsibility to obtain information on the range of applications of the product.

- 2.5 Supplier is not responsible for verifying the correctness and/or legal conformity (especially with regard to IP right infringements) of information or specifications provided by Customer; this is the sole responsibility of Customer.
- 2.6 Customer will indemnify and hold Supplier harmless against claims of third parties from IP infringements as a result of the processing or use of products, drawings or samples of Supplier by Customer or third parties instructed by Customer in a manner infringing IP rights. If such processing or use of the products, drawings or samples leads to litigation based on claimed or actual infringement of IP rights, Customer shall reimburse Supplier for all expenses incurred by Supplier as a result of such litigation.
- 2.7 Warranties by, or side agreements with, employees of Supplier must be confirmed in writing by Supplier to be valid if they exceed the written contract; however, this does not apply to oral agreements and warranties made by Supplier or anyone authorized to represent Supplier.
- 2.8 Customer will pay an appropriate price for product samples requested by Customer.
- 2.9 If the scope of supply includes software, Customer will be granted a non-exclusive license to use the software delivered, including the documentation thereto. Customer is entitled to transfer the license to third parties. Customer may not grant sub-licenses. A duplication of the software is not allowed, except to create a back-up copy.
- 2.10 All other rights in the software and the documentations, including the back-up copy, will remain vested with Supplier and/or the software supplier. The right to resell is not restricted.

### **3. ORDERS**

Orders are deemed accepted if confirmed in writing by Supplier or fulfilled promptly upon receipt of the order.

### **4. DELIVERY SCOPE AND TIME**

- 4.1 Delivery periods start to run from the date of the contract and end upon dispatch of the product or notification of its readiness for dispatch. In the case of one-year or call-off contracts for a certain volume, each call-off will be delivered within four weeks unless a different delivery time has been explicitly agreed.

- 4.2 Changes requested by Customer will result in delivery periods starting to run anew as from the date of the changed order confirmation of Supplier.
- 4.3 Delivery times will be reasonably extended in force majeure events and similar events beyond the control of Supplier or unforeseeable events, such as the denial of official permits, business disruptions, labor disputes, transport disturbances, delays in the upstream supply chain to Supplier that are not the fault of Supplier, etc. if these events can be proven to have a considerable effect on delivery times. If Supplier is already late with the delivery of the products before the occurrence of such event, the provisions of the first sentence will not apply.
- 4.4 These provisions will not lead to any changes with regard to the burden of proof.
- 4.5 Customer's right to withdraw from the contract after expiry of a reasonable grace period for Supplier will remain unaffected.
- 4.6 Delivery in instalments is permissible if Customer can reasonably be expected to accept instalments.
- 4.7 In the case of one-year or call-off contracts for a certain volume, Customer will be obliged to accept the total volume within the agreed period of time; if no time period is agreed upon, the total volume must be called off within one year from the date of the contract.

## **5. PLACE OF DELIVERY, PASSING OF RISK**

- 5.1 Deliveries without installation or assembly of the product shall be ex works or ex warehouse of Supplier at the expense and the risk of Customer. Unless Customer has specified the type of shipment, Supplier will choose the type of shipment at Supplier's reasonable discretion. Supplier will insure the shipment against breakage, transport damage and fire at the request and cost of Customer.
- 5.2 In the case of deliveries without installation or assembly, the risk in respect of the product will pass to Customer when the products are handed over to Customer, the freight forwarder or the carrier, but no later than when they leave the works or the warehouse of Supplier, even if carriage-paid delivery is agreed.
- 5.3 If a delivery without installation or assembly is postponed at the request, or delayed due to the fault, of Customer, the product will be stored at Customer's risk. In such case, the date of the notification of readiness for dispatch shall be deemed to be the date of dispatch. The risk shall pass to Customer at the time at which Customer is in default of acceptance.
- 5.4 In the case of deliveries with installation and assembly of the product, the risk in respect of the product will pass on the date of acceptance, but no later than on the

date on which Customer starts using the product. A delivery is deemed accepted if Customer has not expressly refused acceptance within 14 days following the request to accept the delivery. Supplier undertakes to inform Customer of this legal consequence when making the request. Clause 5.3 applies *mutatis mutandis*.

## **6. PRICES**

- 6.1 All prices are ex works exclusive of freight/postage, packaging, insurance and applicable VAT, which shall be paid in addition. Costs for putting a product into operation and for assembly, adjustment, etc. will be charged separately.
- 6.2 Supplier has the right to increase the price of the product if the period between the date of the contract and the agreed date of delivery is more than 4 weeks and the cost of production of the product have increased between the date of the contract and the delivery date due to circumstances beyond the control of Supplier, especially increased costs of parts and components. If Supplier increases the price in such case, the price increase must not exceed the production cost increase. Upon request, Supplier will present evidence of the production cost increase to Customer.

## **7. PAYMENT**

- 7.1 The agreed price is payable net in Euros within 30 days from the due date and receipt of the invoice or similar request for payment, charges to be borne by Customer, unless agreed otherwise. Customer will bear the payment risks and costs. Checks, promissory notes and bills of exchange will be accepted only after prior written consent of Supplier and subject to final settlement.
- 7.2 Customer will have a right to retention or set-off only in respect of counterclaims that are uncontested or finally established in law.
- 7.3 Costs of securities to be provided, letters of credit to be used in international transactions, etc. will be borne by Customer.

## **8. LIABILITY FOR QUALITY DEFECTS**

- 8.1 Customer will inspect the products for defects immediately following receipt. Apparent defects must be notified in writing to Supplier within 5 working days from receipt, hidden defects within 5 working days from their discovery.
- 8.2 If a defect is notified in time, Supplier will remedy the defect (multiple times if necessary) within a reasonable period depending on the complexity of the product, and Customer will give Supplier the opportunity to do so. Supplier may decide on the

type of remedy (supply of a defect-free product or rectification of the defect), taking into account the interests of Customer.

- 8.3 If Supplier fails to remedy the defect, Customer may (at Customer's option and notwithstanding any claims for damages) cancel the contract or demand a price reduction.
- 8.4 All claims for defects under a warranty of quality which were or could have been discovered by Customer before installation or processing of the products shall be forfeited once the product is processed or installed. This does not apply if Supplier, Supplier's officers or persons employed by Supplier in the performance of Supplier's obligations have acted with intention or gross negligence, have caused damage to life, limb or health, are under a liability for the violation of a material contractual obligation within the meaning of clause 9.1, or if liability is mandatory under the Product Liability Act (*Produkthaftungsgesetz*).
- 8.5 Supplier does not guarantee a certain product life expectancy, especially in difficult operating conditions that were not known beforehand. Claims based on premature malfunction or failure of the delivered product will not be accepted if they result from such difficult operational conditions or operational conditions not known beforehand.
- 8.6 With regard to products manufactured to drawings or specifications provided by Customer, Supplier's warranty of quality only extends to include compliance with the specifications. The mandatory liability under the German Product Liability Act for willful and grossly negligent actions, for damage to life, limb or health or breach of an essential contractual duty will remain unaffected.
- 8.7 Liability is also excluded for quality defects not or only marginally affecting the value or the suitability for use.
- 8.8 Claims based on quality defects will become time-barred after 12 months from commissioning, but no later than 15 months after the risk has passed. The first sentence will not apply if damages are claimed on the basis of willful or grossly negligent breach of any duty by Supplier or a person employed by Supplier in the performance of Supplier's obligations or on the basis of damage to life, limb or health. The first sentence will also not apply where section 438 (1) No. 2 or section 634a (1) No. 2 of the German Civil Code (*Bürgerliches Gesetzbuch - BGB*) prescribe longer periods.
- 8.9 Customer will have a right to recourse under sections 478 and 479 BGB only if Customer's claim is justified and only to the extent provided by the law, but not in respect of goodwill agreements with Supplier. Such recourse also requires compliance with the obligations of the party entitled to recourse, in particular compliance with the obligation to notify defects.

## **9. GENERAL LIMITATION OF LIABILITY**

- 9.1 Supplier can be held liable under the applicable laws in respect of claims for damages made by Customer on the basis of willful action or gross negligence on the part of Supplier or Supplier's officers or persons employed by Supplier in the performance of Supplier's obligations. Supplier can further be held liable under the applicable laws for the fulfillment of material contractual obligations. Material contractual obligations are obligations the fulfillment of which is crucial for the proper performance of the contract and which a contracting party may normally rely on. If Supplier, Supplier's officers or persons employed by Supplier in the performance of Supplier's obligations have acted neither with intention nor with gross negligence, the liability for damages will be limited to the foreseeable damage that may typically occur with this type of contract.
- 9.2 Clause 9.1 above does not apply to any liability for culpable damage to life, limb or health. Clause 9.1 does not apply to the liability under the German Product Liability Act either.
- 9.3 Claims for damages, no matter on what legal ground, beyond those referred to in Clauses 9.1 and 9.2 will not be accepted. This will also apply if Customer claims reimbursement of futile expenditure instead of damages.
- 9.4 If Customer provides materials for the production of ordered products, Supplier will keep such materials insured against theft only. Supplier may be held liable for the loss or deterioration of such materials only if Supplier has acted with intention or gross negligence.
- 9.5 The statutory provisions regarding the burden of proof will remain unaffected.

## **10. RETENTION OF TITLE**

- 10.1 Delivered products will remain the property of Supplier until full payment of all monies owed to Supplier in respect of the business relationship with Customer, including from other current or future contracts ("Retained Goods").
- 10.2 If Retained Goods are processed by Customer to form a new, movable item, this will be done on behalf of Supplier but shall not create any obligation or liability on the part of Supplier. The new item will be the property of Supplier. If Retained Goods are processed together with other goods not owned by Supplier, Supplier will acquire co-ownership of the new product in proportion of the value of the Retained Goods (invoiced price) to the value of the other goods at the time they were processed and the value of the processing. If the Retained Goods are linked, mixed or commingled with other goods not owned by Supplier, as referred to in sections 947 and 948 BGB, Supplier will acquire co-ownership of the new product in accordance with the law. If the Retained Goods are linked, mixed or commingled in such a way that Customer

will acquire sole ownership, Customer will assign to Supplier pro-rata ownership in proportion of the value of the Retained Goods to the value of the other goods at the time they were linked, mixed or commingled. The new items owned or co-owned by Supplier are deemed to be Retained Goods as defined herein. Customer shall preserve such sole ownership or co-ownership for Supplier free of charge and with the due care of a prudent businessman.

- 10.3 Customer hereby assigns to Supplier all claims from the sale of the products to which Supplier has retained title in the amount of the value of the Retained Goods, irrespective of whether or not the products are sold together with products not owned by Supplier. Supplier accepts the assignment. If Supplier is the co-owner of the resold products to which Supplier has retained title, the assignment is made for the value of the pro-rata share of Supplier in the Retained Goods.
- 10.4 Customer assigns the assignable claims against third parties resulting from the integration of the Retained Goods as essential parts of a property, a ship, a ship under construction or an aircraft in the amount of the value of the Retained Goods. Supplier accepts the assignment. Clause 10.3, third sentence, applies *mutatis mutandis*.
- 10.5 Customer may process, install, use or sell the Retained Goods only in the ordinary course of business and provided that the claims referred to in Clauses 10.3 and 10.4 above are indeed transferred to Supplier. Any other disposition over the Retained Goods, especially any pledge or assignment for security purposes, will require the consent of Supplier.
- 10.6 Customer may collect the receivables assigned to Supplier under Clauses 10.3 through to 10.5 in the course of Customer's ordinary business; Supplier can revoke this right. Supplier will not exercise Supplier's own right to collect these receivables for as long as Customer meets Customer's payment obligations, including towards third parties. At the request of Supplier, Customer shall identify the debtors of the assigned receivables and notify the debtors of the assignment. Supplier may itself inform the debtors of the assignment. In the event of any doubt as to the continuation of the contract, the exercise of the retention of title, and in particular a request for surrender of the products, shall be construed to constitute a cancellation of the contract.
- 10.7 Customer must notify Supplier immediately of any enforcement action by third parties against the Retained Goods or the assigned receivables and make available the documentation required for an objection to enforcement proceedings.
- 10.8 Supplier undertakes to release securities, at Customer's request and at Supplier's option, in so far as the realizable value of the securities exceeds the claims to be secured by more than 10%.

## **11. JURISDICTION**

- 11.1 The laws of the Federal Republic of Germany shall apply exclusively and without regard to the United Nations Convention on Contracts for the International Sale of Goods (CISG). The contract language is German.
- 11.2 If Customer is a merchant, an entity under public law or a fund under public law, the courts at the place of Supplier's registered office or residence shall have jurisdiction over all disputes between the parties, including actions on checks, promissory notes or bills of exchange and actions restricted to documentary evidence. Supplier may alternatively sue Customer before any other competent court.

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