

## PREAMBLE

All deliveries and services are based - also in the future - exclusively on the following conditions, even if we do not refer to them specifically in the individual case. Their validity can only be partly or totally excluded by express written agreement for an individual transaction. General terms and conditions, especially purchase conditions of the purchaser, shall not apply to our deliveries and services. We shall not be bound by these terms and conditions even if we do not object to them expressly in an individual case; we herewith object to them. Our General Delivery and Sales Conditions are regarded as accepted, at the latest with the acceptance of the goods or the service.

## I. SCOPE OF DELIVERY OBLIGATIONS

1. Our offers are non-binding, even if made on the purchaser's request. A legally binding contractual relationship with the purchaser shall only be constituted once we have confirmed the order in writing, which may also be possible by fax, by letters created automatically without signature, or e-mail; the same applies to modifications or amendments to the contract. As far as scope, type and time of the delivery are concerned, our written order confirmation shall be binding.

2. We reserve the right to any modifications of construction, production and design of our products. Our catalogues and our product presentations published on the Internet are continually being updated. Any illustrations and drawings contained therein shall not be binding and shall not be part of the properties agreed upon. They neither represent any guarantee for durability nor quality.

3. The documents belonging to the offer, such as drawings, data sheets, figures, diagrams, files, etc., shall only be approximates where not expressly described as being binding. The documents shall remain our property; we reserve all rights to them. Without our written consent, they must not be disclosed to any third party and they must be returned to us at any time on request.

4. Call orders must be placed and accepted in due time and with the partial quantities agreed. In case of call orders where term, production batch quantities and release times have not been agreed, we shall be entitled to request a binding definition of the releases 3 months after the date of the order confirmation, at the latest. If the purchaser does not comply with this request within 3 weeks, we shall be entitled to grant him a last additional period of two weeks for doing so and when this additional period has lapsed as well, we shall be entitled to withdraw from the contract or to refuse delivery and claim damages. In any case, the entire quantity ordered in the call order has to be accepted and to be paid by the purchaser 18 months after the order, except when otherwise stipulated. If the contractual quantity should be exceeded by the individual calls, we shall be entitled to deliver the surplus, but not obligated to do so. We can charge for the excess at the prices valid at the time of the call or the delivery.

## II. PRICE

1. All prices are quoted in EURO. The applicable value added tax shall be charged separately.

2. The prices quoted apply to delivery ex works, without insurance and packaging.

3. Surcharges and a recalculation of the agreed remuneration shall be admissible as far as they are necessitated by the circumstances, e.g. material costs, wage or energy cost increases, an increase of the public charges etc., and if the goods or services are to be provided later than 4 months after the contract date. In case of any other price increases, the purchaser shall be entitled to withdraw from the contract if the list price has been increased far more than the general costs of living. Any deliveries for subsequent orders that are placed after the date of the price adjustment shall be charged at the new prices without the purchaser being entitled to withdraw from the contract.

## III. DELIVERY

1. The delivery term shall start with the dispatch of the order confirmation, but not before all details of the performance of the order have been clarified and not before receipt of an agreed advance payment or provision of material; the delivery terms are always stated by us subject to our own supply by our suppliers. The delivery term shall be deemed to have been complied with when the delivery item has been dispatched or collected before the expiration of this term or when a ready-for-dispatch note has been issued in cases where the goods could not be dispatched or collected without our being responsible for this.

2. In case of force majeure or other events beyond our responsibility that would threaten the smooth processing of the order, in particular delivery delays of our suppliers, disturbances of traffic or operation, industrial disputes, shortage of materials or energy, we shall be entitled to withdraw, entirely or partially, from the contract or to postpone delivery without the purchaser being entitled to claim damages. The purchaser may request from us a statement specifying whether we want to withdraw or whether we want to fulfil the contract within an adequate period of time. If we do not make such a statement, the purchaser shall be entitled to withdraw from the contract. We shall not be liable for the events or circumstances referred to above even if they occur during an existing delay of delivery.

3. In case of a delivery delay for which we are responsible, the purchaser shall grant us an adequate grace period. Once this period has expired, the purchaser may claim damages and/or withdraw from the contract insofar as the goods have not been delivered or indicated as being ready for dispatch until the end of this period. The purchaser is not entitled to withdraw from the contract if delivery delay has not been caused by us.

4. The purchaser is only entitled to claim damages as a replacement for the services if the cause of the damage is based on intent or gross negligence on our part. This does not apply if it is a firm deal.

5. The delivery obligations and the delivery terms shall be suspended as long as the purchaser is in delay with acceptance of the goods or any other obligation, without our rights from the purchaser's delay being thereby affected, or without him exceeding the credit limit granted by us. In this case, the risk of accidental loss or accidental deterioration shall pass to the purchaser from the date he is in delay.

6. The delivery term originally agreed shall no longer apply if the order is modified with our written consent.

7. Adequate partial deliveries as well as deviations from the order quantities (max.  $\pm 5\%$ ) shall be admissible if the purchaser can be reasonably expected to accept this and as long as the latter's interests are taken into account.

8. The weight and the number of pieces of the goods delivered determined by us shall be decisive for the invoicing.

## IV. DISPATCH

1. The goods shall be dispatched at the purchaser's costs and risk from a location to be determined by us.

2. Unless the purchaser has submitted any special requests, we shall choose, at our own discretion, the packaging, as well as type and channel of dispatch. The additional costs for special wishes of the purchaser shall be borne by the latter. We shall not be obliged to choose the cheapest type of dispatch.

3. If the dispatch or the delivery is delayed upon the purchaser's request, we shall be entitled to set him an adequate period of time for accepting the goods and to demand immediate acceptance as well as a compensation for the damage caused by the delay once this period has lapsed.

## V. TERMS OF PAYMENT

1. Payments shall be made in accordance with the conditions specified in our order confirmation.

2. The purchaser bears the costs for his payment, especially all kinds of banking charges and expenses.

3. Cheques shall be accepted only with the usual proviso. With any type of payment, the settlement date shall be the day on which we can dispose over the amount due.

4. If a deferment of payment is granted or if the purchaser is in default with his obligations to pay, he shall, in the meantime, be liable to pay interests of 9 percent above the respective basic interest rate, without the need for a reminder notice. We reserve the right to claim further damages due to the delay. The purchaser reserves the right to prove that lower damages have been incurred. Furthermore, we are entitled to charge the purchaser a fixed rate of € 40.00 for the reminder.

5. The purchaser shall not be entitled to offset payments against any counter claims or rights unless his claims or rights are acknowledged by us, untested or final and absolute. The purchaser is not entitled to retain payments on account of disputed counterclaims either.

6. All our claims are due immediately if terms of payment are not adhered to, or we become aware of circumstances which appear to impair the creditworthiness of the purchaser. In this case, we are also entitled to supply outstanding consignments on cash-in-advance terms or security deposit, or to withdraw from the contract after a reasonable grace period and/or claim damages for non-fulfilment. In addition, we may prohibit the resale or processing of the goods delivered and request that the purchaser, at his costs, return the goods to us or assign the indirect possession of the goods delivered, and withdraw the authorization to collect claims pursuant to Section IX. 7. Already now, the purchaser agrees that we shall, in the mentioned cases, be authorized to enter into his premises and to take away the goods delivered.

7. Payments shall generally be set off against the oldest invoice that is due for payment. As long as an older invoice has not been paid, the purchaser is not entitled to discount on later invoices.

# Grässlin Zeitschalttechnik GmbH

## General Delivery and Sales Conditions

### VI. COMPLAINTS AND NOTICES OF DEFECT

1. Complaints because of incomplete or incorrect delivery or notices of evident defects must be delivered to us in writing immediately, at the latest, however, within 2 weeks after receipt of the goods. Any other defects must be reported to us in writing immediately, at the latest, however, within 2 weeks after they have been detected. If we have not received the complaint or notice of defect in due time, any warranty claims of the purchaser shall be excluded. In case of defects reported in due time, the purchaser shall be entitled to the claims according to Section VII.

2. In case of damage in transit, the purchaser must procure an ascertainment of the damage by the railroad company, the postal service or the transport company.

3. If a part of the goods delivered is defective, the purchaser shall not be entitled to reject the entire delivery, unless the partial delivery is of no interest to the purchaser.

### VII. WARRANTY

1. The purchaser's claims for supplementary performance shall be time-barred within 12 months from the statutory start of the limitation period. The same applies for withdrawal and diminution. This time limit does not apply if:

- the law according to § 438 section 1 no. 2 BGB and § 634a section 1 no. 2 BGB requires longer time periods,
- in case of intent,
- in case of fraudulent concealment, and
- in case of non-compliance with a quality guarantee.

We shall be obliged, at our option, to eliminate any defects or make a replacement delivery if the delivery items are defective. The purchaser's reimbursement claims for expenses according to § 445a BGB shall also be time-barred within 12 months from the statutory start of the limitation period, provided that the last contract in the supply chain is not a consumer goods purchase. Any legal provisions regarding suspension of expiration, suspension and recommencement of the limitation period remain unaffected. Reimbursement claims against us according to § 445a BGB are only valid if the purchaser has not made an agreement with his customer which goes beyond the statutory claims for defects.

2. The purchaser shall grant us the time and opportunity that, in our equitable discretion, is required for the elimination of the defects. Any parts that are replaced shall become our property.

3. If the supplementary performance fails, if we let the adequate period granted to us for this purpose expire without making a new delivery or without eliminating the defect, or if subsequent performance is impossible or refused by us, the purchaser shall be entitled to withdraw from the contract or demand a reduction of the purchase price, the same shall apply to cases where we are unable to provide supplementary performance.

4. The warranty shall neither apply to defects and/or damage due to normal wear and tear nor defects and/or damage caused by inappropriate or negligent use, excessive stress, improper use, wrong handling etc. or circumstances that are not provided for in the contract unless the damage is due to our fault.

5. Without our consent, warranty claims may not be assigned to any third party.

6. We shall not be liable for any defects caused by improper modifications or repairs that are carried out by the purchaser or a third party. 7. Our liability for essential third-party products shall be restricted to the assignment of the warranty claims we are entitled to from the supplier of the third-party product unless satisfaction from the assigned right fails or the assigned claim cannot be enforced for any other reasons.

8. Unless otherwise provided below, any further claims of the purchaser against us, irrespective of the legal cause thereof, shall be excluded, in particular claims for the compensation of a damage that does not exist and/or occur in the goods delivered themselves (e.g. loss of profit, consequential damage or other economic losses); this exemption from liability shall not apply if liability is required by law because of deliberate action, gross negligence or a promise of guarantee or if an essential contractual obligation has been violated or in case of injuries to life and limb or health. In case of negligent, but not grossly negligent violation, our liability shall be restricted to the replacement of the typical foreseeable damage.

9. The above provisions shall apply accordingly to the delivery of other goods than those agreed upon in the contract.

### VIII. LIABILITY, PERIOD OF LIMITATION

1. The exclusion and the limitations of our liability for damages as set forth in Section VII. 8 shall apply accordingly to all cases of our liability for damages due to violation of contractual, or quasi-contractual obligations and tortious act. They shall not apply to claims pursuant to Paragraphs 1 and 4 of the Product Liability Law and to claims due to initial inability to perform at the point of conclusion of the contract or impossibility for which we are responsible. This exemption from liability shall not apply if liability is required by law because of deliberate action, gross negligence or a promise of guarantee or if an essential contractual obligation has been violated or in case of injuries to life and limb or health.

2. If our liability for damages is excluded or restricted, this shall apply in the same way to the personal liability of our executive bodies, employees or authorized agents.

3. The claims of the purchaser referred to in Sec. 1 shall become time-barred after 24 months, calculated from the end of the year of the passing of the risk. If the statutory period of limitation is shorter than 24 months, this statutory period shall be applicable to the relevant claims on the part of the purchaser. This reduction of the period of limitation shall not apply to claims for reasons of tortious act or product liability.

4. The statutory provisions concerning the burden of proof shall remain unaffected.

### IX. RETENTION OF TITLE

1. All goods delivered (goods subject to retention of title) shall remain our property until all and any claims to which we are entitled because of the business relationship, in particular the outstanding balance claims, have been fully settled by the purchaser. This shall also apply when payments are made on specially designated claims.

2. If the goods subject to retention of title are combined with other goods by the purchaser, we shall acquire co-ownership of the new object pro rata of the invoice value of the goods subject to retention of title to the invoice value of the other goods used. If our ownership lapses due to a combination, the purchaser herewith agrees to assign to us his property rights to the new objects to the amount of the invoice value of the goods subject to retention of title and keeps them for us, free of charge. The resulting co-ownership rights shall be considered as goods subject to retention of title within the meaning of Section 1. We accept the assignment.

3. The purchaser may sell the goods subject to retention of title in the normal course of business at his terms and conditions only if these contain a comprehensive retention of title in accordance with the provisions set forth herein, and as long as he is not in default, provided that the claims from the resale pass to us pursuant to Sections 4. and 6. hereof. The purchaser does not have any other right of disposition of the goods subject to retention of title, in particular the authorisation to dispose of the goods subject to retention of title shall be automatically revoked if insolvency proceedings are applied for or liquidation commenced regarding the assets of the purchaser

4. The claims of the purchaser from reselling the goods subject to retention of title are herewith assigned to us. They serve as security to the same extent as the goods subject to retention of title. We herewith accept the assignment.

5. If the purchaser sells the goods subject to retention of title together with other goods not obtained from us, the assignment of claims from the resale shall only correspond to the amount of the invoice value of the goods subject to retention of title that are sold in the individual case. When goods in which we have a co-ownership share pursuant to Sec. 2. are sold, the claims shall be deemed to have been assigned corresponding to the value of this co-ownership shares.

6. If the purchaser uses the goods subject to retention of title for the execution of a contract for work, Sections 4. and 5. shall apply accordingly to the claims from this contract.

7. The purchaser shall be entitled to collect claims from sales according to Sections 3., 5., and 6. until this permission is revoked by us, which shall be admissible at any time. We will only make use of the right of revocation in the cases specified in Section 3., as well as V. 5. Any other assignment of the claims by the purchaser shall not be permitted. Upon our request, the purchaser shall be obliged to inform his customers immediately about this assignment to us – unless we do it ourselves – and to provide any information and documents required for the collection of claims to us. The purchaser is prohibited from hypothecation or transfer of the goods by way of security.

8. Our retention of title implies that, once all our claims have been fully paid, the title to the goods subject to retention of title shall ipso jure pass to the purchaser and he shall be entitled to the assigned claims without any restrictions. If the value of the existing securities exceeds the secured claims by more than 20 % in total, we shall be obliged to release securities accordingly, at our option, on request of the purchaser. The assessment of securities shall be based on their realizable value.

9. The purchaser shall inform us immediately about any seizure or any other threat or impairment to our ownership rights or claims by a third party and provide the bailiff's return or any other documents to us and he shall do anything within his power to protect our rights.

10. We shall be entitled at any time to enter into the warehouse and the business premises of the purchaser, in order to remove, separate or label the goods subject to retention of title. At our request, the purchaser shall provide any relevant information concerning the goods subject to retention of title and hand over the related documents. The purchaser, at his costs, shall be obliged to provide comprehensive insurance coverage for the goods subject to retention of title in our favour and to supply evidence thereof on request. He herewith assigns all claims from these insurances to us; we accept the assignment.

11. The assertion of our retention of title or the revocation of the authorizations granted herein shall not be considered as a withdrawal from the contract. The purchaser's right of possession in the goods subject to retention of title expires if he does not meet his obligations arising from this or another contract. We shall then be entitled to take possession of the goods subject to retention of title ourselves and to exploit them in the best possible way by means of a private sale or an auction, without prejudice to the payment obligations or any other duties of the purchaser. The proceeds thus realized shall be appropriated to the purchaser's outstanding payments after the costs have been deducted. Should there be any surplus, this shall be paid to the purchaser.

12. If the retention of title or the assignment is not effective under the law to which the goods belong, the corresponding security valid in this field of law shall be deemed as agreed. If the cooperation of the purchaser is required in this context, he shall take any measures that are necessary for the constitution and preservation of such rights.

#### X. TOOLS

1. Tools, moulds, appliances and the like – in the following referred to as „tools“ – are in principle our assets, even if the purchaser had paid for these wholly or partially. This shall apply irrespective of whether the tools were manufactured by us or by commissioned third parties.

2. We undertake not to manufacture any parts for third parties using tools for which the purchaser has paid the entire cost, providing the purchaser supplies us with follow-up orders. This obligation expires without a claim for reimbursement of any type against us arising for the purchaser if we do not receive further orders within two years after the last order.

3. We shall store the tools in good condition free of charge. The purchaser shall bear the costs of maintenance and repairs. Our obligation to store the tools shall come to an end after expiry of the two-year period stated in Sec. 2. We shall be entitled to dispose of the tools afterwards.

4. The provisions above (Sections 1 to 3) shall not apply to tools for common and generally usable items.

#### XI. PROTECTIVE RIGHTS OF THIRD PARTIES

Insofar as we have to manufacture products on the basis of drawings, specifications, models, or samples given to us by the purchaser, the purchaser takes upon himself the responsibility of guaranteeing to us that the rights of third parties are not infringed upon. In case of violation, the purchaser will indemnify us in full from any claims by third parties and fully reimburse us for any resulting damages. If a third party claims its industrial property rights we are entitled to stop the manufacturing or delivering of the items immediately without checking the legal situation.

#### XII. MISCELLANEOUS PROVISIONS

1. The place of performance and jurisdiction for both parties under the contract is D-78112 St. Georgen, Germany. We are also entitled to file an action against the purchaser at the purchaser's general place of jurisdiction.

2. All legal relations between the purchaser and us shall be governed exclusively by law of the Federal Republic of Germany.

3. Should one or several of the provisions of these terms and conditions or the other contractual provisions be or become invalid, this shall not affect the validity of the remaining provisions. The invalid provisions shall be reinterpreted in such a way that the legal and economic purpose intended with them is achieved to the greatest possible extent. The same shall apply if, during the execution of the agreement, a gap in the agreement requiring an amendment becomes evident. The contracting parties undertake to replace the ineffective provisions immediately by legally valid provisions or to close the contractual gap.

4. We shall store the purchaser's data for the purposes of the contractual relationship.

**GRÄSSLIN**

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