

Terms and Conditions of Sale and Delivery for Dornhan Engineering Works Ltd.

1. Conclusion of Contract

Our tenders, deliveries and other services are provided exclusively on the basis of the Terms and Conditions of Sale and Delivery as outlined below. Even should there apply on the side of a particular purchaser conditions of sale and delivery deviating from or conflicting with the terms and conditions outlined below, said deviating or conflicting conditions shall not be recognized by us, except in the case where we shall have given explicit written consent to the validity of these latter conditions. This shall apply even in the case where we shall have effected, without reservation, the delivery of goods or services while being aware of the existence of such conflicting or deviating conditions of sale and delivery on the side of the purchaser.

All tenders and offers shall be without obligation and subject to approval, except in the case where it shall have been explicitly stated that said offers shall apply only for a limited time. No data bearing on weight, measurements, power-capacity and so on contained in catalogues, prospectuses, circulars, advertisements, reproductions or price lists are binding. We also reserve the right to make alterations to same.

These our terms and conditions of sale and delivery shall also apply to all future business transactions with the purchaser, without our being under any obligation to make, in each case, separate mention of this fact.

2. Terms of Payment, Default on Payment

In the case where nothing to the contrary has been agreed, the purchase price shall be due for payment, without deduction of discount, immediately upon delivery. At the latest 30 days after the due date and receipt of the invoice/request for payment, or after the acceptance of the service concerned the purchaser shall be deemed to be in default.

In the case where the purchaser shall be in default, we shall have the right to claim default interest at a rate 5% above whatever ECB base interest rate shall apply at the time in question. The right shall be reserved to both contracting parties to bring concrete proof of the default's having caused them a lesser, or a greater damage than that covered by the above. In the case where, a contract with a purchaser having once been concluded, it subsequently becomes clear that our claim to payment is endangered by said purchaser's lack of ability to perform, we shall be entitled to exercise the rights belonging to us under §321 of the German Civil Code ("Defence of Insecurity"). This will mean our being entitled to declare immediately due for settlement all those claims arising from the current business connection with the purchaser which shall not already have lapsed under the applicable statute of limitations. The Defence of Insecurity shall also extend to all further deliveries and services arising from the business connection with the purchaser. The purchaser shall only be entitled to offset these claims against counter-claims made from his side in the case where these counter-claims are recognized as enjoying legal force, remain uncontested, or are acknowledged by us. This shall also apply to any right of retention of payment, insofar as the purchaser's counter-claim shall not rest upon the same contractual relation.

3. Delivery, Force Majeure, Self-Delivery Reservation, Default.

The risks involved in transport shall be borne by the purchaser, regardless of how usual within the industry the means of transport used to dispatch the goods may be. We shall have fulfilled our contractual obligations as soon as we shall have brought the objects concerned, in proper manner and order, to the point of dispatch. Deliveries are made "freight forward", or non-prepaid. If carriage-paid delivery is required, the transport costs thereby arising will also be invoiced. The stipulation that the risks involved in transport are to be borne by the purchaser shall remain unaffected by this last point. Our statements regarding delivery dates and times refer only to target deadlines which we do our best to meet. Even delivery dates and times firmly agreed to shall not constitute fixed-date delivery deadlines in the meaning of §361 of the German Civil Code and §376 of the German Commercial Code, except in the case where these shall have been explicitly designated as "fixed-date delivery deadlines". In the case

where we shall prove unable to make a specific delivery on the date or to the deadline agreed to, the purchaser shall accord to us an extended delivery deadline lasting at least three weeks. The purchaser shall only have the right to set for us an extended deadline of a shorter duration than this in the case where circumstances obtain which render an extended deadline of three weeks more than the purchaser can reasonably be expected to tolerate and which were already recognizable as such by us at the time of the conclusion of the contract. The fact alone that a binding delivery date was agreed to between the parties shall not suffice to justify the setting of a shorter deadline. Only after the elapse of the extended deadline shall the purchaser be entitled to derive rights from the delay in question.

In the case where a delivery deadline is expressly designated, in writing, as a binding one, the delivery period shall begin as soon as all details regarding execution of delivery shall have been clarified and both parties shall be in agreement regarding the conditions of the closing of the contract and of the execution of same. Binding delivery periods shall be deemed to have been observed at the point and through the act of the handing over of the products concerned to those in charge of their transportation.

Our obligation to deliver shall be deemed to be suspended for so long as a purchaser is in arrears with regard to any obligation obtaining vis-à-vis our company.

Events falling into the category of *force majeure*, and likewise any other unforeseen events – most especially disruptions and disturbances in the areas of material-acquisition, labour, manufacture and delivery occurring either in our own business or in sub-contractor businesses – which we shall have been in no position either to predict or to prevent as regards the duration of the effects produced by them shall absolve us, for the whole of the duration of any such disruption and also for an appropriate subsequent “warm-up” period and in all areas impinged upon by said effects, of our obligation to perform, provided only that the disruption in question shall not have been brought about by us deliberately or by some gross negligence on our part.

In the case where it shall prove impossible, as a result of *force majeure* or of any other sort of unforeseeable occurrence lying outside the responsibility of our company, for us to deliver the goods or services agreed to within an appropriate period of time, both the purchaser and we ourselves shall enjoy the right to withdraw, either in part or in whole, from the contract. The same shall apply to the case of the *ex post facto* impossibility of fulfilling the terms of the contract, insofar as this impossibility shall lie outside of our responsibility. There shall be no basis for any claims for compensation for damage arising from such a withdrawal from the contract. In the case where either of the parties enjoying a right to said withdrawal shall wish to indeed make use of this right, he shall be obliged to communicate his intention to do so to the other party without delay, immediately upon recognizing the extent of the occurrence compelling him so to withdraw. Excluded are any claims by the purchaser to compensation for loss or damage.

The same shall apply in the case where approvals by third parties required for the execution of deliveries, be these from official authorities or other sources, and other necessary documents do not arrive in good time. An appropriate extension of the delivery deadline shall also apply in the case where the purchaser subsequently changes his initial purchase order or fails to provide us in good time with all the information required for the execution of the relevant delivery.

In those cases of default on delivery, or of inability to perform the service, which lie within the responsibility of our company, we shall be liable, insofar as said default or inability shall not have been the result of any malicious intent or any gross negligence on our part, only subject to the following restrictions for compensation for damage:

- In the case of default on delivery, the purchaser may, where damage for him results from said default, claim compensation amounting to a maximum of 0.5% of the price of the still-uneffected delivery for each full week that the delay in delivery endures, said claim for compensation, however, having in no case to amount in total to more than 30% of the net value of the delayed delivery or more than 10% of the net value of the purchase order as a whole.

- Should any claim be made for compensation for damages as a consequence of non-fulfilment, this claim shall be restricted to compensation for such damages as ought to have been foreseen by us, in the light of circumstances which we were in a position to recognize, as possible consequences of the infringement of the contract already at the time of the conclusion of same (so-called "contractually typical" losses or damages). In the case of negligence not being gross negligence, liability shall be limited to 50% of the damage arising therefrom.
- All further claims arising from default on delivery shall be governed and determined exclusively by the stipulations of Item 6 of the present Terms and Conditions of Sale and Delivery.

4. Retention of Title

The goods sold shall remain our property until all claims and debts arising from our business connection with the purchaser shall have been paid and settled in full. Insofar as the validity of this retention of title to the goods shall be contingent upon the fulfilment of any prior conditions or special formal requirements or regulations in the state in which the point of delivery is situated, it shall be incumbent upon the purchaser to draw our attention to said contingency and to ensure, at his own cost, that said conditions and requirements are indeed fulfilled.

It shall be permissible for the purchaser to dispose of and to sell, in the normal course of business, those goods which remain subject to said retention of title or in which we continue to enjoy a right of co-ownership, except in the case where he shall be in default on payment or shall have discontinued payment. He may not, however, pawn said goods in which title is retained, nor pledge them as security. Sale or disposal of the goods abroad shall be permissible only with our prior consent. In the case where the purchaser shall indeed sell or dispose of goods subject to retention of title, he shall thereby assign to us, with immediate effect and up to the point in time of the settling of all our claims against him, those rights which he shall enjoy, as a result of this sale or disposal, vis-à-vis the parties who shall have purchased the goods from him, including all ancillary rights, securities and retentions of title. We shall be entitled to require that the purchaser inform of said assignment of rights those standing, in turn, to him in the relation of purchasing parties, and also that he provide us with all such information and documentation as may be necessary for the collection of accounts receivable related thereto. It shall likewise be permissible for the purchaser to process and to work upon, in the normal course of business operation, those products which remain subject to said retention of title, again except in the case where he shall be in default on payment or shall have discontinued payment. In the case where such processing shall indeed occur, it is agreed between us with immediate effect that we shall enjoy a retention of title in the new product coming into existence through said processing which shall correspond to the proportionate value of those products to which we had originally retained title of ownership vis-à-vis the other objects involved in said processing. The purchaser shall be deemed to be holding in safekeeping for us that new entity which shall have emerged through the processing. The same shall apply in the case where the purchaser shall mix, mingle or bond with other objects those products in which we shall have retained title of ownership.

The purchaser shall be obliged to provide us at any time with information regarding the location of the delivered goods and their condition, and to permit us to inspect them. In the case of the purchaser's defaulting on payment or of a worsening of his financial situation, we shall have the right to require that he relinquish to us those goods which belong to us. This shall constitute, subject to compelling legal stipulations, a withdrawal from the contract only in the case where we shall explicitly declare it to do so.

In receiving goods thus relinquished by the purchaser, note shall be taken of any reduction in the value of same due to wear and tear or damage, that is to say, the purchaser shall be invoiced for said reduction in value and for the cost of restoring the goods to their original condition.

5. Liability for Defects, Material Defects

It shall be incumbent on the purchaser to check and inspect the goods delivered immediately upon receiving them and before subjecting them to any processing. Any complaints concerning incomplete deliveries or delivery of the wrong goods, or objections bearing on immediately evident defects present in same, must be made to us, in writing, within eight days of the receipt of the goods in question. Any other defects discovered in the goods are to be reported to us in writing without delay immediately upon their being discovered, and in no case later than eight days after their discovery. Where defects are reported to us only after periods longer than those here stipulated, all rights in respect of guarantee or warranty asserted on grounds of said defects are, in business dealings, excluded. It is, moreover, a precondition of the validity of the guarantee or warranty rights of the purchaser that he shall have fulfilled, in the proper manner, all those obligations incumbent upon him by force of law as regards examination of goods received and submission of complaint in proper time. In the case of damage occurring during transport, it shall be incumbent on the purchaser to ensure that a report of the relevant circumstances is immediately drawn up by postal or railway authorities (whichever is concerned).

All those parts which shall prove to be defective as a consequence of some circumstance obtaining before the point in time of the transfer of risk are to be either mended by the supplier or replaced by new deliveries of the same part(s), as the supplier shall choose, but in each case without demand for further remuneration. As soon as such defects are recognized, the supplier is to be immediately informed in writing of this fact. All parts replaced shall become the property of the supplier.

It shall be incumbent upon the purchaser to allow the supplier, after consultation with this latter, all the time and opportunity which the supplier shall require in order to undertake all those repairs and improvements to the delivered goods, and replacement deliveries of same, which shall appear necessary to the supplier. In the case where said time and opportunity is not allowed to the supplier by the purchaser, the supplier shall be absolved of all liability for any consequences which may ensue therefrom. Only in urgent cases in which the operating safety of the purchaser's enterprise shall be endangered, or in which such action shall be necessary in order to obviate some quite disproportionate loss or damage to the purchaser's business – the supplier having, however, in such cases to be immediately informed that such circumstances do obtain – shall the purchaser have the right to himself correct or repair a defect in the delivered goods, or to have it corrected or repaired by some third party, and to demand of the supplier compensation for expenditures necessary in this regard.

To the extent to which a complaint made about goods needing to be repaired or re-delivered shall prove indeed to be a justified one, the supplier shall bear that part of the costs arising from said repair and/or re-delivery which shall consist in: the costs of the replaced item itself, including those of dispatching same; appropriate costs for work of disassembly and re-assembly in respect of said item; and furthermore, where the individual case is such that such a measure can reasonably be demanded by the purchaser, the costs of the making available, where necessary, of the supplier's own mechanics, fitters and other manual employees. Within the limits of the stipulations of the law, the purchaser shall have a right to withdraw from the contract in the case where the supplier – taking into account here all the cases specified by law to form exceptions – shall allow a period of appropriate duration which shall have been accorded to him for repairs and improvements to defective delivered goods, or for replacement deliveries of same, to elapse without in fact effecting such repair, improvement or replacement delivery. In the case where the defect concerned shall only be a minor one, the purchaser shall have the right only to a reduction of the contractually agreed price. In all other cases, the right to a reduction of the contractually agreed price shall remain excluded.

No liability shall be accepted particularly in the following cases: inappropriate or improper use; incorrect assembly or commissioning of same by the purchaser or by some third party; natural wear

and tear; incorrect or negligent handling or treatment; maintenance carried out in an improper manner; inappropriate working materials; inadequate construction work; inappropriate foundation or subsoil; chemical, electro-chemical or electrical influences – insofar as these do not lie within the responsibility of the supplier. In the case where the purchaser or some third party shall attempt to carry out improvements on the goods in an inappropriate manner, the supplier shall not be liable for any consequences ensuing therefrom. The same shall apply in respect of any changes or alterations to the object(s) delivered undertaken without the prior consent of the supplier.

Defects in Title

In the case where the use of the object(s) delivered shall lead to an infringement of domestic industrial property rights or domestic copyrights, the supplier shall, at his own expense, procure for the purchaser the right in principle to the continued use of said object(s), or shall modify said object(s) in a manner which, while being reasonably acceptable to the purchaser, shall bring it about that the infringement of property right or copyright no longer obtains.

Should it prove impossible to achieve these latter aims in economically feasible terms or within an acceptable period of time, then the purchaser shall have the right to withdraw from the contract. Under the preconditions mentioned, the supplier shall also enjoy a right to withdraw from the contract.

The supplier shall furthermore indemnify the purchaser against any uncontested or legally established claims raised from the side of the owners of the industrial property rights and copyrights concerned.

The duties and obligations stated above are, except insofar as something to the contrary is stipulated under clause 6 below, final and conclusive in respect of cases of infringement of industrial property rights or copyrights.

They shall apply only if

- the purchaser informs the supplier immediately and without delay of any claims that shall have been asserted in respect of infringements of industrial property rights or copyrights,
- the purchaser gives, in an appropriate measure, his support to the supplier in the latter's efforts to ward off such claims as shall have been asserted or, alternatively, makes it possible for the supplier to effect those measures of modification to the object(s) delivered mentioned in the stipulation above,
- the supplier reserves for himself the right to all possible measures for the warding off of said claims, including out-of-court settlements,
- the defect in title in question is not one which has its origin in some instruction issued by the purchaser, and
- the infringement of property right or copyright was not one occasioned by the purchaser's making, on his own authority, changes to the object(s) delivered or using same in a manner not concordant with the stipulations of the contract.

6. General Limitation of Liability

As regards instances of breach or violation of duties and obligations both contractual and extra-contractual, and especially as regards impossibility, default, breach of duties prior to the contract, and impermissible action, we shall be liable – even when such breaches or violations are committed by our own leading employees or other vicarious agents – only in cases of malicious intent or gross negligence, with the liability also being limited here to damage of a “contractually typical” nature which might reasonably have been foreseen at the time of the closing of the contract.

These limitations shall not apply in cases of culpable breach of essential contractual obligations, in cases where a danger exists of the very purpose of the contract's being defeated, in cases where liability is compulsory under the provisions of the Law on Product Liability, or in cases where actual loss of life or damage to limb or health shall have been suffered. Nor shall they apply if and insofar as we shall have knowingly and deceitfully kept silent regarding defects in the goods delivered or shall have given explicit guarantee of their freedom from same. The rules bearing on onus of proof shall remain unaffected by these latter stipulations. Except insofar as it shall have been explicitly agreed otherwise, all contractually-based claims which the purchaser shall come to enjoy vis-à-vis ourselves by reason of, or in connection with, the delivery of goods shall fall subject to the period of limitation and lapse one year after said delivery of goods. This period of limitation shall also apply to such goods as shall have been used, concordantly with their normal manner of application, in some work of building construction and which shall have been the cause of some defect or insufficiency in said building. These latter stipulations shall not affect our liability in cases of breaches of obligation arising from malicious intent or gross negligence. Nor shall they affect the subjection to the statute of limitations of actions of legal recourse. In cases of subsequent or supplementary performance this period of limitation shall not begin to run again, each time, from its beginning.

7. **Miscellaneous**

No verbal agreement, nor any alteration to a contract, shall be deemed to enjoy any validity except when they have been confirmed by us in writing.

The purchaser may not, without our consent, cede or transfer to any other party the rights and claims belonging to him according to the contract.

Place of performance for all deliveries and other services shall be Dornhan. In the case where the purchaser shall be a merchant, a corporate body under public law, or a separate estate under public law, the place of jurisdiction shall be, as we decide, either Dornhan or that court which shall have, in accordance with the stipulations of the law, jurisdiction over the purchaser. This shall still apply in the case where the purchaser shall have, at the time of concluding the contract, no general domestic place of jurisdiction, or where, at some point in time after concluding the contract, he shall transfer his domicile or official place of business abroad, or where, at the time of legal action being brought, his usual place of sojourn shall not be known.

The contractual relation is subject to German law, the jurisdiction of the United Nations Convention on Contracts for the International Sale of Goods (CISG) being here excluded.

In the case where one of the above stipulations or regulations should be or become invalid or incapable of being put into practice, the remaining regulations shall remain unaffected by this. The parties hereby agree, with immediate effect, to replace that stipulation or regulation which shall prove invalid or incapable of being put into practice with one which, within the limits of what is legally permissible, shall approach as closely as possible to achieving the same commercial aim as that pursued by the regulation become invalid. The same shall apply also in the case where the present regulations shall prove to contain a lacuna.