

General Terms and Conditions

ITW Test & Measurement GmbH | Esslingen am Neckar/ Germany



1. DEFINITIONS

In these General Terms of Delivery, "Supplier" shall mean ITW Test & Measurement GmbH; "Buyer" shall mean the person, firm, company, corporation or body placing the order; "Products" shall mean the products (including any Software and Documentation, as defined in Section 11) described in Supplier's Acknowledgement of Order; "Services" shall mean the services described in the Supplier's Acknowledgement of Order; "Contract" shall mean the written agreement (including these General Terms of Delivery) made between Buyer and Supplier for the supply of Products and/or provision of Services; "Contract Price" shall mean the price payable to Supplier by Buyer for the Products and/or Services, and "Supplier Affiliate" shall mean an ITW Test & Measurement GmbH company which is an affiliate within the meaning of Section 15 of the German Stock Corporation Act (AktG).

2. EXCLUSIVENESS

2.1 Supplier's Terms of Delivery shall apply exclusively; any conditions of Buyer conflicting with or deviating from Supplier's Terms of Delivery will not be accepted by Supplier, unless Supplier has explicitly agreed to them in writing.

Failure to explicitly reject Buyer's Purchasing Conditions shall not be construed as a waiver on the part of Supplier of the following provisions or as a modification of the provisions.

2.2 These General Terms of Delivery shall apply to all future business transactions with Buyer, even if their applicability is not explicitly agreed again.

3. COMPLETION OF CONTRACT AND PRICES

3.1 Quotations from Supplier shall be subject to change and without obligation.

3.2 Orders must be placed in writing. In their order, at the latest, Buyer must specify in which way, to what purpose, in which country and, if applicable, in combination with which other systems and/or software the Product is to be used.

3.3 The contract shall not enter into force until Buyer's order has been accepted by Supplier by issuing a written order acknowledgement, and shall be subject in each case to the granting of any governmental approval that may be required within the framework of import or export control according to Section 6.2. Descriptions of the Products or Services contained in Supplier's quotation, such as diagrams, images, weights, dimensions and other technical specifications shall only become part of the contract, if repeated or explicitly confirmed in the order confirmation. Supplier reserves the right to perform minor modifications and/or improvements on the Products prior to delivery, to the extent that these do not have a negative impact on the properties of the Products and do not affect the price of the Products or the delivery time.

3.4 Modifications to this contract, and agreements relating to its execution shall be made in writing.

3.5 Prices shall be firm for delivery within the period specified in Supplier's quotation. They are to be understood as exclusive of Value Added Tax and other similar or additional taxes, duties, fees, and other charges arising outside Germany in connection with the execution of the contract.

3.6 The prices for the Products are valid for delivery Ex Works from the manufacturing facility, exclusive of freight, insurance and handling and, unless otherwise agreed in writing, exclusive of packing. If Products are supplied with packing, Buyer shall not be entitled to return the packing material.

3.7 The minimum order value is €250 / GBP250. Under this amount, the order shall be subject to a processing charge of € 50 / GBP50.

3.8 Hazardous Products will be supplied ex works in all cases.

4. PAYMENT

4.1 All payments shall be made in full and in the agreed currency within thirty days from receipt of invoice. Invoices for the Products shall be issued at any time after Buyer has been notified that the Products are ready for dispatch.

Services shall be invoiced monthly in retrospect, or at an earlier date following completion of the Service. In the event that Buyer is in payment default with regard to a payment due, Buyer shall be entitled to claim default interest to the amount of 8% p.a. above the basic interest rate in accordance with Section 247 of the German Civil Code (BGB). If Supplier can prove higher default losses, they shall be entitled to assert a corresponding claim.

Supplier shall have the right to suspend the execution of the contract (including the withholding of shipments) in the event that Buyer fails to make a payment due under the contract or any other agreement.

4.2 Buyer shall only be entitled to offset their own claims, if these are uncontested or finally established in law. Buyer's right of retention shall be limited to claims arising from the same contractual relationship.

5. DELIVERY PERIOD

5.1 Unless otherwise agreed in writing, delivery and performance periods shall be non-binding, and shall commence on conclusion of the contract.

5.2 If Supplier is delayed or prevented from fulfilling their contractual obligations due to acts or omissions on the part of Buyer or their agents (including, but not limited to failure to provide specifications and/or fully dimensioned working drawings and/or such other information as Supplier reasonably requires to fulfill their obligations under the Contract in a timely manner), the delivery/completion period and the Contract Price shall be adjusted accordingly.

5.3 If delivery is delayed due to an act or omission on the part of Buyer, or in the event that Buyer fails to accept delivery, or fails to provide adequate shipping instructions, after having been notified that the Products are ready for dispatch, Supplier may store the Products at a suitable place at Buyer's cost. In this case shipment shall be deemed to have been effected. Notwithstanding any earlier passage of risk, the risk in relation to the Products shall pass to Buyer on transport of the Products into the warehouse.

6. FORCE MAJEURE AND EXPORT AND IMPORT CONTROL REQUIREMENTS

6.1 The delivery time (or in the case of Work Services, completion time) will be prolonged adequately, if industrial action, particularly strike and lock-out, or other unforeseeable circumstances outside the Parties' sphere of influence, can be proven to have a significant effect on the delivery of the Products or completion of the Services.

The same shall apply if such circumstances arise at the facilities of sub-suppliers. Supplier shall not be liable for such circumstances, even if they arise at a point in time, at which Supplier is already in delay. In particular in cases of acts of god, war, armed conflicts or terrorist attacks, civil unrest, fire, explosion, accidents, flooding, sabotage, embargo, fulfilment of governmental requirement, laws or regulations, administrative orders or measures, or industrial action, strike, lockout or court orders, the execution of the contract may be suspended.

6.2 Supplier shall not be obliged to supply hardware, software or technology, or render the services, while official approvals within the framework of import/export control have not been granted or legal requirements for granting exemption from such approvals have not been fulfilled (in particular under the legal provisions of the United States of America, the European Union and the jurisdictions in under which Supplier have their registered office or from which components of the Products will be supplied). In the event that already granted governmental approvals are revoked, or if the applicable import/export control provisions are changed, such that Supplier is unable to fulfill the contract, Supplier shall be released from their contractual obligations without any liability on their part.

6.3. If the execution of the contract or part of the contract is suspended in accordance with item 6 herein for more than 180 successive calendar days, each of the parties may withdraw from that part of the contract, which is at that time unfulfilled, without incurring any liability, by giving written notice to the other party, with the proviso that Buyer shall be obliged to pay to Supplier adequate compensation for work already commenced, and to pay for all Products supplied and services rendered up until the time of withdrawal.

7. FACTORY TEST, INSPECTION AND CALIBRATION

7.1 Prior to shipment the Products shall be tested by Supplier or by the manufacturer, and subjected, to the extent that this is possible, to Supplier's or Manufacturer's standard tests at the manufacturing facility. Additional tests or inspections (including tests required by Buyer or their agents, or tests conducted in the presence of Buyer or their agents, and/or calibrations), or the provision of test certificates and/or detailed test results shall be agreed in writing, whereby Supplier reserves the right to charge for such tests.

7.2 If Buyer or their representative fail to appear at the agreed place for such tests, inspections and/or calibrations, after having been notified at least seven days ahead of the scheduled date that the Products are ready for the tests or inspections, these may be conducted in the absence of Buyer or their representative. In such a case, Supplier's declaration that the tests/inspections were conducted successfully shall replace the corresponding declaration by Buyer. Supplier will bring this to Buyer's attention explicitly.

8. TESTING UPON DELIVERY

Buyer's warranty rights are subject to Buyer's proper compliance with Buyer's inspection and complaint obligations set forth in Section 377 of the German Commercial Code (HGB).

9. DELIVERY AND PASSAGE OF RISK

Unless otherwise agreed in the contract, the Products will be delivered CPT (named destination). Freight, packaging and handling will be charged in accordance with Supplier's usual rates.

The risk of accidental loss or damage to the Products shall pass to the Buyer on delivery. Following passing of risk, the responsibility for taking out insurance cover for the Products shall rest with Buyer. To the extent that the contract explicitly states that responsibility for insuring the Products following their delivery to the carrier rests with Supplier, insurance cover will be charged at Supplier's usual rates. The terms "ex works", "free carrier", "FCA", "Carriage Paid", "CPT", and similar terms shall be interpreted in accordance with Incoterms as last amended.

10. RESERVATION OF TITLE

10.1 Notwithstanding the provisions of Section 11, title to the Products shall not pass to Buyer until Supplier has received all payments due under the contract. Supplier shall be entitled to take back the Products, in the event that Buyer has violated the terms of the contract, and in particular, if Buyer is in default of payment. The fact that Supplier is taking back the Products shall not be construed as a withdrawal from the contract, unless Supplier has declared this to be the case explicitly and in writing. Supplier shall be entitled to re-sell the Products taken back, the proceeds from the sale will be offset, following deduction of reasonable costs, against the sums due from Buyer.

10.2 Buyer undertakes to treat the Products with care; specifically Buyer shall be obliged to take out at their own cost insurance against fire or water damage with a cover sum equivalent to their purchase value. If maintenance or inspection services are required, Buyer shall have these carried out in a timely manner at their own expense.

10.3 Buyer shall inform Supplier immediately in case of seizure or other access by Third Parties, so that Supplier can file a suit according to Section 771 of the German Code of Civil Court Procedures (ZPO). To the extent that the Third party is unable to refund to Supplier any legal charges and out-of-court expenses resulting from legal action in accordance with Section 771 of the German Code of Civil Court Procedures (ZPO), Buyer shall be liable to Supplier for any damages incurred.

10.4 Buyer shall be entitled to re-sell the Products within the course of ordinary business. Buyer herewith assigns to Supplier all claims against Buyer's customers or against Third Parties arising from the re-sale to the amount of the invoice total (including value added tax), irrespective of whether or not the Products were sold after or without further processing. Without prejudice to the assignment of claims, Buyer shall be entitled to collect these claims. To secure their claims, Supplier shall be entitled to disclose the assignment of claims at any time. This shall apply in particular to the extent that Buyer is in payment default, has permanently discontinued their payments or an application has been filed to start insolvency proceedings against the Buyer's assets. Supplier shall have the right to demand that Buyer notify Supplier of all assigned claims and the respective debtors, and disclose all information necessary to collect these claims, and submit all documents relating thereto which are necessary for the collection of the claims, and inform the debtors (Third Party) of the assignment.

10.5 Treatment or processing of the Products by Buyer shall be made in all cases for Supplier as manufacturer within the meaning of Section 950 of the German Civil Code (BGB). Should the Products be processed together with other items not belonging to Supplier or a Supplier Affiliate, then Supplier or the relevant Supplier Affiliate shall acquire joint ownership of the new

item proportional to the value of the Products in relation to the value of the other items at the time of the processing.

Concerning the items newly created by the processing, the same agreements shall apply as for the Products sold under reservation of title.

10.6 Should the Products be connected or intermixed with other items not belonging to Supplier or a Supplier Affiliate in such a way that they cannot be separated anymore, Supplier or the relevant Supplier Affiliate shall acquire joint ownership of the new item proportional to the value of the Products in relation to the value of the other items connected or intermixed with the Products at the time of the connection or intermixture. If processing, combining or intermixture takes place in such a way that the items of Buyer are the main constituents, then Buyer shall be deemed to have transferred to Supplier the proportional co-ownership. Buyer shall hold the sole or joint ownership originating therefrom in custody for Supplier .

10.7 Buyer shall also assign to Supplier by way of security the claims against Third Parties that may arise from combining the object of purchase with fixed property.

11. DOCUMENTATION AND SOFTWARE

11.1 Ownership of the copyrights in software and/or firmware incorporated into or provided for use with the Products ("Software") and of the documentation supplied with the Products ("Documentation") shall remain with the relevant Supplier Affiliate (or such other party as may have supplied the Software and/or Documentation to Supplier) and shall not be not transferred hereby to Buyer.

11.2 Unless otherwise agreed in these provisions, Buyer shall be granted herewith the non-exclusive right to use the software and documentation in conjunction with the Products to the extent and as long as the software and documentation are not duplicated or disclosed to Third Parties and no access is granted to Third Parties (except for Supplier's usual operating and maintenance manuals). The use of certain software (as defined by Supplier and including, but not limited to control system software and AMS Software) by Buyer shall be subject exclusively to the relevant licensing conditions of the Supplier Affiliate or Third Party.

11.3 Buyer may transfer to aforementioned license to a Third Party selling, renting or leasing the Products, provided that this Third Party agrees in writing to be bound by the conditions listed in the present Section 11.

11.4 Supplier and Supplier Affiliate shall retain ownership in all inventions, designs and processes made or developed by them, and other than the provisions listed in Section 11, no industrial or intellectual property rights are granted herewith.

12. LIABILITY FOR DEFECTS

12.1 Supplier shall warrant that the Product and the Service have the agreed properties upon passage of risk. Unless otherwise agreed, the agreed properties are governed by Supplier's technical specifications as published at the time of order confirmation.

12.2 If, upon passing of the risk, the Product or Service does not have the properties agreed upon, Supplier warrants to provide subsequent performance by, at Supplier's option, either repairing or replacing the parts concerned (subsequent rectification) or by replacing the Product with a Product which is free from defects, or rendering a Service which is free from defects (subsequent delivery).

12.3 Supplier shall be granted multiple attempts at rectification of a given defect, and shall be allowed to transfer from subsequent rectification to subsequent delivery at their own discretion. Supplier shall bear all costs incurred in connection with subsequent performance, including but not limited to the cost of transport, travel, labour and materials, unless these were caused by the Product having been transported to a place other than the place of performance.

12.4 Buyer shall be entitled to set Supplier a reasonable deadline of at least four (4) weeks for effecting the subsequent performance. If subsequent performance fails within this period, Buyer shall be entitled, upon expiry of this deadline, to claim a price reduction or, in case of a significant defect, to withdraw from the contract. Compensation for damages is limited to the provisions of Section 14 .

12.5 Except for cases of wilful intent, all claims and rights due to defects of Buehler Products shall become time-barred twenty four (24) months from the time of delivery, if the Product is used in single-shift operation. In case of multishift operation or use in production, the warranty period shall be twelve (12) months. The above warranty does not include parts subject to wear. If based on loss of life, bodily injury or damage to health, or gross negligence on the part of Supplier, claims for compensation due to defects shall be time-barred within the statutory period.

12.6 Supplier assumes no warranty for normal wear and tear, material provided by Buyer, processing of the Products performed by Buyer, damage due to improper storage, improper installation or operation or inadequate maintenance, or damage resulting from any modification or repair not approved beforehand by Supplier in writing; furthermore Supplier assumes no warranty for the use of non-authorized software or non-authorized spare or replacement parts. The cost incurred as a result of investigating and remedying such defects shall be borne by Buyer upon request.

Buyer shall be solely responsible at all times for the completeness and correctness of all information provided by him.

12.7 For Products or Services procured by Supplier from a Third Party (other than Supplier Affiliates) for the purpose of re-selling to Buyer, Supplier shall assign to Buyer all warranty rights against this Third Party. In addition, Supplier shall be obliged to assume the warranty set forth in the preceding sections for Buyer, provided that Buyer has previously attempted in vain to enforce the assigned warranty claims against the Third Party.

13. LIABILITY FOR INFRINGEMENT OF PROPRIETARY RIGHTS

13.1 Supplier shall warrant that no patents or other proprietary rights of Third Parties exist at the time of passage of risk, which might be asserted with regard to the Product or Service within the framework of its intended use. The aforementioned items 12.2 to 12.5 and 12.7 shall apply analogously.

13.2 Liability on the part of Supplier shall be excluded, if a patent or property right of a Third Party is infringed upon, because Supplier

followed a design or an instruction given by Buyer, or because the Product is used in a way, for a purpose, in a country, or in conjunction with other Products or software unknown to Supplier on conclusion of the contract.

13.3 Throughout the period of Supplier's liability, Buyer undertakes to inform Supplier in writing and at the earliest possible opportunity, if a Third Party claims patent rights or other proprietary rights with regard to the Product or the Service, or asserts claims, whether in court or out of court. Prior to acknowledging a claim made by a Third Party, whether in court or out of court, Buyer shall give Supplier the opportunity to deliver an opinion on the matter. Supplier must be granted, upon request, the right to conduct negotiations or engage in the legal dispute with the Third Party at their own responsibility and at their own expense. Buyer will be liable to Supplier for any damage resulting from a culpable violation of the aforementioned obligations.

13.4 Buyer warrants that the use of a design provided by them or compliance with an instruction given by them will not lead to Supplier infringing on any patents or other proprietary rights in the performance of their contractual obligations. Buyer will indemnify Supplier against all reasonable costs and damage incurred by Supplier as a result of the non-observation of this warranty.

14. INDEMNIFICATION

14.1 Supplier shall be liable to Buyer only for damage caused by gross negligence or by wilful intent. However, in the case of a gross breach of contractual obligations Supplier will assume liability for culpable acts of their staff (legal representatives, senior executives and other agents) that can be proven to have caused the damage.

14.2 Except in the case of damage caused wilfully by Supplier's employees or damage caused by gross negligence by legal representatives or senior executives of Supplier, no liability shall be assumed for indirect damage, specifically for loss of profit, unless such damage is covered by the protective purpose of a warranty explicitly assumed.

14.3 Except in the case of damage caused wilfully by Supplier's employees or damage caused by gross negligence by legal representatives or senior executives of Supplier, Supplier's liability shall be restricted in all cases to the damage typically foreseeable damage at the time of the conclusion of the contract

14.4 Further claims for compensation due to loss of life, bodily harm, injury, the violation of a warranty explicitly granted in writing, and claims based on the Product Liability Act shall remain unaffected.

15. WITHDRAWAL FROM CONTRACT

Buyer shall only be entitled to withdraw from the contract due to the non-fulfilment of a contractual obligation by Supplier, if the responsibility for such non-fulfilment rests with Supplier.

16. LEGAL AND OTHER PROVISIONS

16.1 If Supplier's obligations under the Contract are increased or reduced by reason of the making or amendment after the date of Supplier's quotation of any law or any order, regulation or by-law having the force of law, such that the performance of Supplier's

obligations under the Contract is affected, the Contract Price and delivery period shall be adjusted accordingly and/or the performance of the Contract suspended or terminated, as appropriate. An adjustment of the price shall not be made, if delivery is due to take place within four months from conclusion of the contract .

16.2 Unless required by applicable law, Supplier is not responsible for collecting, handling, recycling or disposal (i) of the Products or any parts of the Products, provided that the same are regarded as "waste" according to the law, or (ii) of any objects of which the Products or any parts of the Products are spare parts. If Supplier is required by applicable law (including waste electrical and electronic equipment legislation, European Directive 2006/42/EC and related legislation in EU Member States) to dispose of Products or any part thereof as "waste", Buyer shall - unless prohibited by applicable law - pay Supplier, in addition to the Contract Price, either (i) Supplier's standard charge for disposing of such Products or (ii) if Supplier does not have such a standard charge, Supplier's costs (including all handling, transportation and disposal costs and a reasonable mark-up for overhead)

16.3 Buyer's personnel shall, whilst on Supplier's premises, comply with applicable site regulations and reasonable instructions of Supplier, including but not limited to those relating to safety, security and electrostatic discharge.

17. SPECIAL TOOLS, FIXTURES, TEST RIGS ETC.

Buyer shall not acquire ownership of any special tools, fixtures, matrices, moulds, templates, test rigs etc. developed by Supplier in connection with the contract, or developed for Supplier or Supplier Affiliates. Supplier and Supplier Affiliate are entitled to use or dispose of these at their own discretion.

18. COMPLIANCE WITH LEGISLATION

Buyer agrees that the receipt and the use of hardware, software, services and technologies by Buyer is subject to any and all applicable laws, statutes, regulations and ordinances regarding import, export control and permits as applicable from time to time - including, but not limited to, any such laws, statutes etc. applicable in the United States, the European Union and the jurisdictions in which Supplier and Buyer have their registered office or, as the case may be, from which items are supplied - as well as to the requirements of any and all permits, permissions, general licenses or exemptions from licenses related thereto. On no account shall Buyer use, transfer, release, export or reexport any such hardware, software or technology in violation of such applicable laws, regulations, orders or requirements or the requirements of any licenses, authorizations or license exceptions relating thereto.

Buyer agrees furthermore that he won't engage in any activity that would expose the Supplier or any of its affiliates to a risk of penalties under laws and regulations of any relevant jurisdiction prohibiting improper payments, including but not limited to, bribes to officials of any government

or government agency, institution or subdivision thereof, to political parties or political party officials, or candidates for public office, or to any employee of any customer or supplier.

Buyer agrees to comply with all legal, ethical and other regulations that may apply.

19. SUPPLEMENTARY PROVISIONS

If the Products comprise a control system, the control system and the related services shall be subject exclusively to Supplier's supplementary terms and conditions for the supply of control systems and related services. These supplementary conditions shall have precedence over these General Terms of Delivery; copies can be obtained from Supplier upon request.

20. MISCELLANEOUS

20.1 To the extent that the contract is subject to the provisions of the German Civil Code regarding contracts for work and services, Buyer shall be entitled to terminate the contract for individual or all products and services, provided that he gives Supplier adequate advance notice and compensates Supplier for all losses (including, but not limited to loss of expected profit), damage, costs and expenses resulting from the termination.

20.2 A waiver by either party with regard to a breach or non-fulfilment or with regard to a right or legal remedy, or a regular practice, shall not be construed as a continuing waiver with regard to another breach or non-fulfilment, or another right or legal remedy, unless such a waiver has been agreed in writing in a document signed by the engaging party.

20.3 Should individual sections paragraphs or other provisions of the contract be ineffective or unenforceable, this shall not affect the remaining provisions of the contract. The parties agree in this case to replace the ineffective provision with one coming as close as possible to the economic effect originally intended by the ineffective or unenforceable provision.

20.4 Buyer shall not be entitled to assign their rights or obligations hereunder without the prior written consent of Supplier.

20.5 THE PRODUCTS OR SERVICES SOLD OR PROVIDED UNDER THIS CONTRACT ARE NOT SOLD FOR USE IN ANY NUCLEAR OR RELATED APPLICATIONS WHATSOEVER, AND ARE NOT INTENDED FOR SUCH USE. Buyer (i) accepts the Products and Services subject to the preceding restriction, (ii) undertakes to impose such restriction in writing on all later purchasers and users and (iii) undertakes to indemnify, defend and hold Supplier and Supplier's Affiliates harmless from and against any and all claims, losses, liabilities, actions, judgments and damage claims - including incidental damages and consequential damages - as a result of the use of the Products or Services for any nuclear or related application, whether based on tort, contract or on any other basis, including any allegation that Supplier's liability is based on negligence or strict liability.

20.6 The contract shall be subject to the laws of the Federal Republic of Germany to the exclusion of the to the exclusion of the UN Convention on Contracts for the International Sale of Products.

Exclusive legal venue for all disputes arising from this contract shall be Stuttgart/Germany. However, Supplier will be entitled to bring legal action against Buyer at Buyer's registered office.

20.7 The headings to the clauses of this agreement are for ease of reference only and shall not affect the interpretation of these provisions.

