

## § 1 General – Scope of Application

- 1.)  
The general terms and conditions of sale (“Sales Conditions”) set forth herein apply to all products or services (“Products”) supplied by westmann Engineering GmbH (“Seller”) to a purchasing company (“Buyer”) in a sales transaction. Seller does not accept conditions of Buyers which are contradictory to or diverging from the Sales Conditions unless Seller expressly approves of their validity in text form. These Sales Conditions also apply in case Seller supplies Buyer without reservations even though contradiction or divergence of the Buyer’s conditions from the Seller’s Sales Conditions is known to Seller.
- 2.)  
All agreements between Seller and Buyer concerning the performance of the contract at hand are set down in text form therein. For the avoidance of doubt, subsidiary agreements not put into text form do not exist.
- 3.)  
The Sales Conditions only apply to entrepreneurs in accordance with § 310 sec. 1 BGB (German Civil Code).
- 4.)  
Until further notice, the Sales Conditions also apply to all future transactions with Buyer.

## § 2 Offer – Additional Offer Documents – Samples

- 1.)  
Provided that the order constitutes an offer in accordance with § 145 BGB (German Civil Code), Seller is entitled to accept the order within 10 days after receipt.
- 2.)  
Seller’s offers are not binding unless expressly stated otherwise.
- 3.)  
Seller reserves all rights of ownership and copyright regarding all illustrations, drawings, calculations or other documents; those are to be returned if requested. They shall not be made accessible to third parties without Seller’s explicit written consent. § 12 sec. 1.) and 2.) of these Sales Conditions shall apply additionally.
- 4.)  
Unless otherwise agreed in text form, samples are inspection specimens only. Samples remain Seller’s property; they are to be returned on demand, however, unsolicited at least after 2 weeks as of receipt. Shall this deadline be exceeded, Buyer will be charged for the samples. Passing on samples to a third party requires Seller’s explicit written consent. Additionally, regulations as stated in § 12 sec. 1.) and 2.) of these Sales Conditions apply.
- 5.)  
In case of violation of the regulations as stated in sec. 3.) and 4.), Seller is entitled to claim for damages according to the legal requirements.

## § 3 Performance

- 1.)  
Delivery items may be subject to deviations as far as these deviations are customary in trade or technically inevitable and not unreasonable for Buyer.
- 2.)  
Descriptions of Seller’s scope of delivery and products or of other particulars such as in catalogues, product information, electronic media or etiquettes are based on Seller’s general experience and knowledge, and as guidelines shall not bind Seller.
- 3.)  
Specifications concerning condition and possible use of Seller’s products do not imply any guarantee, particularly not in accordance with §§ 443, 444, 639 BGB (German Civil Code), unless they are expressly labelled as such in writing.
- 4.)  
In view of sec. 2.) and 3.), Buyer is not released of the duty to test the product’s suitability for the intended purpose.
- 5.)  
In case of call-offs, i.e. of orders of specific quantities supplied according to Buyer’s demand within a fixed period of time, Seller is entitled to procure the material for the entire order and to produce the whole order quantity immediately. Any alterations requested after placing the order can therefore not be considered unless otherwise agreed beforehand.
- 6.)  
Seller will use reasonable endeavours to deliver the agreed quantities of serial parts produced according to Buyer’s wishes or to drawings and of articles outside the Seller’s standard sizes but shall not be liable for minimal deviation. The quantity actually delivered will be charged. In case of prepayment, the difference will be credited at once. Buyer shall be informed immediately in case of short delivery.

## § 4 Prices – Terms of payment

- 1.) Unless otherwise agreed by Seller in the order confirmation, prices are quoted in EURO and are effective “EXW warehouse An der Strusbek 1, 22926 Ahrensburg, Germany“ Incoterms 2010, packaging extra. Any other possible additional costs arising such as bank charges or expenditure for customs clearance shall be borne by Buyer.
- 2.) Minimum value for orders is EUR 100,00 net of product value.
- 3.) Value added tax is not included in Seller's prices; it is set out separately on the invoice at the statutory rate of the date of Seller's invoice.
- 4.) In case the delivery time is more than 4 months, Seller reserves the right to appropriate price changes in case of cost decrease or increase after conclusion of the contract, particularly when due to changes in cost of materials and to wage settlements, particular taking effect on the total value of the delivery as calculated before. Changes in the individual items concerned will be proven to Buyer on demand. However, Seller will not be obliged to disclose the calculation as a whole. In case of a price increase of more than 10% Buyer shall be entitled to rescission of the contract
- 5.) Shall unusual substantial increases in cost occur after conclusion of the contract e.g. in Seller's or Seller's suppliers' costs for raw material, energy or freight, and shall these rises lead to a considerable increase of Seller's purchase prices and prime costs, Seller is entitled to demand negotiations with Buyer for price adjustments at once.
- 6.) Failing other explicit arrangements, payment has to be made net within 30 days following the date of Seller's invoice, or within 10 days following the date of Seller's invoice at 2% cash discount. Bills of exchange and cheques are only accepted on explicit agreement. In the event of such agreed submission of bills of exchange or cheques, payment shall only be deemed to have been made upon encashment, due payment provided.
- 7.) In case of default in payment, statutory regulations apply. Particularly, Buyer has to pay interest at 8 percentage points above the current base rate of the European Central Bank on Seller's claim.
- 8.) Buyer is not entitled to set off with counterclaims, unless said claims are legally confirmed, undisputed or have been accepted by Seller. Furthermore, Buyer is entitled to lay a lien on his payment as far as the counterclaim is based on the same contractual relationship.
- 9.) Seller's prices apply for the scope of performance and delivery that has been agreed. Additional or special performances are charged for separately.

## § 5 Terms of delivery – Transfer of risk

- 1.) Delivery will be “EXW warehouse An der Strusbek 1, 22926 Ahrensburg, Germany“ Incoterms 2010, unless defined differently in Seller's order confirmation.
- 2.) Failing Buyer's explicit directive, Seller will arrange for delivery to Buyer or to any other address requested. Unless expressly instructed by Buyer, way of delivery and packaging type are chosen at Seller's reasonable discretion.
- 3.) On request and at the cost of Buyer, Seller can provide transport insurance on the delivery.
- 4.) Unless unreasonable for Buyer, partial delivery is permitted for relevant reasons, in case these are presented to Buyer.
- 5.) In case Buyer may be in default of acceptance or culpably infringes upon other contractual duties of contribution, Seller is entitled to demand compensation of therewith arising damage, incl. possible additional expenditure. Seller reserves the right for further claims.
- 6.) In case the premises of sec. 5.) apply, Buyer bears the risk of accidental destruction or deterioration of the delivery items from the time of default of acceptance or of default of payment.
- 7.) Seller assumes liability according to statutory regulations if the underlying contract is a transaction for delivery by a fixed date. The same shall apply, if – in consequence of a delay in delivery which may be attributed to Seller's default – Buyer is entitled to argue, that Buyer is no longer interested in the performance of the contract.

8.)

Furthermore, Seller assumes liability according to statutory regulations if the delay in delivery is due to intentional or grossly negligent breach of contract. As far as the delay is not due to intentional breach of contract, Seller's liability for indemnity is limited to foreseeable typical damage.

9.)

Seller also accepts liability according to statutory regulations if the delay in delivery caused by Seller is due to culpable infringement of essential contractual duties; in this case, liability for indemnity is limited to foreseeable typical damage.

## § 6 Delivery time

1.)

The beginning of delivery time as presented by Seller presupposes the clarification of all technical and commercial details.

2.)

Seller's delivery times are quoted "ex works" according to the Incoterms 2010. Delivery shall be considered as performed in time, if the merchandise has left Seller's site or readiness for dispatch has been announced before expiration of delivery time.

3.)

If deposit or advance payment has been agreed, the delivery period begins only when the according amount has been credited to Seller's business account.

4.)

Delivery time will be extended accordingly if possible contractual duties of contribution are not attended to by Buyer.

5.)

In case of application to open insolvency proceedings as well as of affidavit of means according to § 807 ZPO (German Code of Civil Procedure) Seller is entitled to detain delivery until full payment has been made or until Buyer furnishes appropriate security. Furthermore, Seller is entitled to claim full payment and – after futile expiration of a reasonable extension of time granted by Seller – to withdraw from the contract unless Buyer furnishes adequate security on Seller's demand.

## § 7 Liability for faulty goods

1.)

Buyer's right to claim for liability for defects presupposes Buyer's examination of the products immediately on delivery in accordance with § 377 HGB (German Commercial Code); If any defect becomes apparent during such inspection, Buyer has to give notice in text form thereof to Seller immediately after discovery of said defect. Omission of notification shall be deemed to be acceptance of the delivery items unless a defect appears later which could not be identifiable during above inspection. Nevertheless, the delivery items are deemed accepted as well, if Buyer omits immediate notification of said (hidden) defects in text form. Complaint's timely dispatch shall preserve Buyer's rights. Furthermore, legal requirements shall apply.

2.)

In case of justified complaints Seller is entitled to subsequent performance which may be carried out as elimination of defect or delivery of items free of defects, as Seller's choice may be.

3.)

Subsequent performance – irrespective of its extent – shall not be considered as an acknowledgement of any asserted defects.

4.)

Where subsequent performance fails, Buyer shall be entitled to rescission of the contract or to a price reduction, according to Buyer's choice.

5.)

Statutory provisions shall apply in case of Buyer's claims due to Seller's intent or gross negligence. As far as claims do not concern intentional breach of contract, Seller shall be liable for foreseeable, typically arising damages only.

6.)

Furthermore, statutory provisions shall apply in case of Seller's culpable breach of cardinal contractual obligations; in such event Seller's liability shall be limited to foreseeable, typically arising damages only.

7.)

As far as Buyer is entitled to claim for indemnity instead of Seller's performance, Seller's liability in the context of sec. 4.) shall as well be limited to foreseeable, typically arising damages only.

8.)

Seller's liability for culpable personal injury shall remain unaffected as shall be liability according to the ProdHaftG (German Product Liability Act).

9.)

Seller assumes no further liability than stated above, particularly not for claims concerning indirect damage or loss of profit.

10.)

Period of warranty shall expire twelve (12.) months after transfer of risk.

11.)

The limitation period in case of recourse on Seller's suppliers in accordance with §§ 478, 479 BGB (German Civil Code) shall remain unaffected.

## § 8 Return of delivery

Return of products as new to which § 7 does not apply always requires Seller's consent; costs for freight and packaging will have to be borne by Buyer. A contribution towards costs of up to EURO 50.00, e.g. for expenditure on storage, may be deducted from the credit note made out for the amount of the returned delivery. Credit notes may only be credited with products.

## § 9 Liability

1.)

Unless stated in §§ 5 and 7 of these Sales Conditions, Seller assumes no liability, no matter what legal ground claims may be based on.

2.)

Claims other than those concerning defects of the delivery items shall be subject to a preclusion period of eighteen (18) months, starting from Buyer's awareness of specific damage and tortfeasor.

3.)

Limitation according to sec. 1.) shall apply as well, if Buyer does not claim damages instead of Seller's performance but refund of vain expenditure.

4.)

Limitation or exclusion of liability shall extend to the individual liability of Seller's employees, legal agents and vicarious agents.

## § 10 Intellectual Property Rights

1.)

Buyer warrants that production of items according to Buyer's instructions does not infringe third parties' rights. Insofar Seller expressly excludes all liability.

2.)

Should infringement of intellectual property rights be substantiated to Seller by a third party, Seller is entitled to abandon any further activity running contrary to those rights.

3.)

If so, Buyer will indemnify Seller from third parties' claims on first demand. Buyer's duty of release comprises any expenditure Seller necessarily incurs in the context of third parties claims.

4.)

Seller reserves the right for further claims for indemnity.

5.)

Statute of limitation concerning said claims expires ten (10) years as of conclusion of the respective contract.

## § 11 Retention of Title

1.)

Seller reserves the right of property in the delivery items until Buyer completely satisfies Seller's claims already perfected at conclusion of the contract at hand. In case of current account, retention of title serves as security for Seller's entire balance claim.

2.)

Buyer shall store the reserved property free of charge for Seller. Buyer is obliged to treat the reserved property with care; necessary maintenance or inspections are to be performed in time by Buyer at Buyer's own expenses. Particularly Buyer is obliged to insure Seller's property sufficiently according to its replacement value and at Buyer's own expenses against damage caused by fire, water, theft and vandalism. Claims arising from said insurances as well as everything possibly acquired as a substitute according to § 285 BGB (German Civil Code) are herewith assigned from Buyer to Seller; Seller hereby accepts assignment. Despite the transfer, Buyer is entitled to assert and collect the debt in his name, by legal proceedings if need be. Seller's entitlement to collection of debts remains unaffected by Buyer's authorisation.

3.)

In case of garnishment or other intervention of third parties, Buyer is obliged to notify Seller in writing at once in order to enable Seller to institute an action (third-party claim proceedings) in accordance with § 771 ZPO (German Code of Civil Procedure); Buyer is obliged to inform concerned third parties about Seller's rights. Buyer shall be liable for Seller's detriment, if and to the extent to which third parties are not able to refund costs arising in or out of court for actions taken in accordance with § 771 ZPO.

4.)

Buyer is entitled to resale delivery items under reserved property in regular course of business; Buyer herewith assigns to Seller all claims against Buyer's customers or other third parties arising from said resale at the amount of the invoice (incl. taxes) irrespective of whether the delivery items under reserved property were resold without or after product processing.

5.)

Even after assignment Buyer remains authorised to collect outstanding claims. This shall not influence Seller's right to collect the debt. However, Seller will not collect the debt as long as: Buyer fulfils his obligation of payment from the sales revenue, Buyer is not in arrears with payment, no application for opening composition or insolvency proceedings is filed, payment has not been stopped. Shall one of these cases apply, Buyer may be required to inform Seller about the assigned debts and the respective debtor, to give all detail necessary for collection, to hand over all necessary documents and to inform the debtor (third party) about the assignment of claims.

6.)

Buyer is not entitled to assignment of claims arising from the resale of Seller's merchandise under reserved property.

7.)

Shall the merchandise under reserved property be processed or modified by Buyer, such processing and modification shall always be deemed to have been performed on Seller's behalf. Shall the delivery items under reserved property be processed or modified together with other objects not belonging to Seller, Seller acquires co-ownership in the resulting merchandise at an interest depending on the ratio of delivery items' value (amount of the invoice, taxes incl.) to the other objects' value which do not belong to Seller. Relevant value will be that at the time of processing or modification. Furthermore, above provisions concerning delivery items under reserved property apply accordingly.

8.)

If the delivery items under reserved property are mingled, mixed or combined inseparably with other objects not belonging to Seller, Seller acquires co-ownership in the resulting merchandise at an interest depending on the ratio of delivery items' value (amount of the invoice, taxes incl.) to the other objects' value which do not belong to Seller. Relevant value will be that at the time of mingling, mixing or combination. Should the resulting merchandise consist of Buyer's objects forming the main part, Buyer herewith undertakes to assign proportionate co-ownership to Seller according to Seller's contribution. The parties hereby agree upon passage of title. Furthermore, above provisions concerning delivery items under reserved property apply accordingly.

9.)

Seller hereby covenants to gradually release at Buyer's demand the securities obtained by retention of title in so far as the property's realisable value exceeds the debts to be secured not only temporarily by more than 10%. The choice of the securities to be released is incumbent upon seller.

## § 12 Secrecy

1.)

Buyer is obliged to keep secret all illustrations, drawings, calculations, other documents or information as well as all commercial and technical detail not commonly known, which Buyer has received under this business connection, unless disclosure has been agreed expressly by Seller in writing.

2.)

The secrecy obligation shall survive performance of this contract, but shall lapse if and in so far as the information included in the entrusted illustrations, drawings, calculations or other documents has become common knowledge.

3.)

§ 2 sec. 5.) of the Sales Conditions applies accordingly.

## § 13 Place of Performance – Jurisdiction

1.)

Unless otherwise stated in the order confirmation, Seller's place of business shall be the place of performance.

2.)

Provided that the Buyer is a salesman, Seller's place of business shall have exclusive jurisdiction, unless another place of jurisdiction is mandatory by German law; Seller is nevertheless entitled to invoke the aid of any other judicially competent court.

## § 14 Applicable Law

1.)

In addition to the above Sales Conditions, the parties agree that the transaction is subject to German law, excluding its Conflict of Laws shall it refer to another legal system, and excluding the UN Convention on Contracts for the International Sale of Goods (CISG) dated 11/04/1980.

2.)

Furthermore, Incoterms 2010 shall apply additionally to the Sales Conditions.