

## **§ 1 General**

### **§ 1.1**

Exclusively the following general terms of sale apply to the business relations between Stolberger Maschinenfabrik GmbH (in the following “Stolberger”) and their commercial customers (in the following “customers”) if and so far nothing different has been explicitly and in writing agreed upon. If the customer on his part refers to his own general terms and conditions then their validity is hereby objected to as far as they deviate from these general terms of sale to the disadvantage of Stolberger. The general terms of sale of Stolberger are also valid, if Stolberger executes the deliveries without reservation in knowledge of terms opposing or deviating from the general terms of sale of Stolberger.

### **§ 1.2**

The general terms of sale of Stolberger are also valid for future transactions with the customer. The version which is valid at the time of the conclusion of the contract is decisive.

### **§ 1.3**

The claims of the customer are not transferable. Stolberger is entitled to transfer its rights to third parties. § 354a HGB (German Commercial Code) remains unaffected.

### **§ 1.4**

Place of performance for all delivery obligations of Stolberger and for all payment and other contractual obligations of both parties is Magdeburg.

### **§ 1.5**

Place of jurisdiction for all disputes which arise directly or indirectly from the contractual relationship is Magdeburg. However, Stolberger is also entitled to take legal action at the general place of jurisdiction of the customer.

### **§ 1.6**

The substantive law of the Federal Republic of Germany to the exclusion of all references to other legal systems and international agreements is effective. The application of the Hague Uniform Law on the International Sale of Goods and the UN Sales Convention on Contracts for the International Sale of Goods is excluded.

### **§ 1.7**

Should one of these regulations be or become completely or partially ineffective or impracticable or should a gap arise, so the validity of the other regulations shall not be affected by this. The parties are obliged to immediately agree upon an effective regulation for the ineffective or impracticable regulation or in cases of gaps. This effective regulation has to be permitted by statute according to the intended purpose of the regulation and has to be economically as close as possible to the ineffective regulation.

## **§ 2 Offer, Delivery, Passing of the Risk**

### **§ 2.1**

The offers of Stolberger are subject to change without notice, as far as nothing different results from agreements/confirmations between Stolberger and the customer.

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## **§ 2.2**

The delivery obligations of Stolberger are subject to the reservation of delivery by ourselves. This also applies with regard to the technical equipment which is required for the production.

## **§ 2.3**

The extent of the delivery obligation of Stolberger, dates of delivery as well as the owed quality of the delivery item commodity according to kind and quantity arise exclusively from agreements of the contractual parties in consideration of agreed orders according to kind and quantity and of the applicable legal regulations.

## **§ 2.4**

Weights, measures, performance data and other technical and general data in catalogues, brochures, illustrations and documents belonging to the offer such as drawings, data sheets and documentations are only roughly decisive unless they are explicitly specified as binding.

## **§ 2.5**

Stolberger is entitled to perform alterations of the delivery item which lead to improvements, as far as no price increases result from this.

## **§ 2.6**

Stolberger is entitled to partial deliveries and partial services of reasonable scope.

## **§ 2.7**

The risk passes to the customer after the goods have been loaded onto the vehicle of the customer. If Stolberger carries out the transport of the goods, then the risk passes to the customer as soon as the goods have arrived at the customer's place of business at the place of destination. If Stolberger carries out the unloading of the goods, then the risk passes to the customer as soon as the goods have reached the respective storage room or rather the place of installation of the machinery to be delivered.

## **§ 2.8**

If the delivery is delayed upon request of the customer or due to reasons which are beyond the supplier's control, so the risk passes to the customer at the time originally provided for the delivery ex works.

## **§ 2.9**

Loading and unloading of the delivery vehicle of Stolberger have to be carried out immediately after the arrival of the means of transport at the customer's premises.

## **§ 3 Date of Delivery/Period of Delivery**

### **§ 3.1**

Date of delivery is the date stipulated in the contract, in the case of deviating dates alternatively the later one.

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### **§ 3.2**

The period of delivery commences with the acceptance of the offer or rather with the posting of the confirmation of the order, however not before the production of the documents, licences, releases, securities to be procured by the person ordering and on receipt of a possible agreed instalment payment.

### **§ 3.3**

Dates and periods of delivery are met if the delivery item has left the plant before the expiry or the readiness for dispatch has been announced.

### **§ 3.4**

If a customer realises that he is not able to take delivery of the goods on the date of delivery, then he has to inform Stolberger about this in writing and at the latest 14 days prior to the date of delivery by indicating the date of the presumably possible delivery.

### **§ 3.5**

Dates of delivery and periods of delivery are postponed to an appropriate extent if the customer does not hand over on time those details to Stolberger which are required for the execution of the order or if the customer alters or the customer is behind with jobs to be executed by him or with the fulfilment of his contractual duties, or in particular is in default with the performance of an agreed payment in advance.

### **§ 3.6**

If a customer does not accept the delivery on the date of delivery, so he is nevertheless obliged to carry out all payments in connection with the delivery as if the delivery had taken place. Stolberger is obliged to provide for the storage of the delivery item at the expense of and to the risk of the customer. In the case where a letter of credit is used, the customer is then obliged to alter this accordingly. On demand of the customer Stolberger is obliged to insure the goods at the expense of the customer.

### **§ 3.7**

Should the buyer culpably default on calling, the taking or the collection of a delivery item by at least 30 days, then Stolberger is entitled to withdraw from the contract with regard to the respective delivery item. In this case the customer is obliged to pay compensation up to the amount of the agreed delivery price of the respective delivery item for the damage which has occurred to Stolberger due to the failure to take delivery of the goods.

## **§ 4 Provisions in Force in the Country of Destination**

At the latest on placing the order the customer is obliged to inform Stolberger about standards and provisions, which are relevant for the execution of the deliveries and services, the operation of the delivery item or the protection of health and safety of the personnel.

## **§ 5 Prices, Terms of Payment, Securities, Default in Payment, Set-Off**

### **§ 5.1**

Agreed prices are calculated ex works (EXW, Incoterms 2000) plus the valid value-added tax and plus accruing transaction taxes and possible other customs duties and charges. Special packagings are charged by Stolberger at cost prices.

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## **§ 5.2**

In contracts with an agreed delivery time of more than 4 months Stolberger reserves the right to adequately increase the prices if after the conclusion of the contract cost increases occur, in particular due to conclusions of collective agreements or changed material prices, including purchase of raw material. If the increase is higher than 5% of the agreed price, then the customer has the right to terminate the contract (right of termination or right of rescission).

## **§ 5.3**

Unless agreed otherwise, the purchase price becomes due and has to be paid in two instalments, namely

- 30% instalment after receipt of the order confirmation and
- 70% after delivery of the goods.

## **§ 5.4**

The payment of the customer has to be made strictly net without any deductions and in the currency stipulated in the contract at the place of business of Stolberger.

## **§ 5.5**

If a customer does not perform a due payment then he defaults on his duty of payment through a reminder of Stolberger, which has been issued after the claim has matured. Also without a reminder the customer defaults on his duty of payment 20 calendar days after the order confirmation or rather the delivery of the goods, however at the latest 30 calendar days after the receipt of an invoice. Regardless of this, a default in payment arises if a customer does not perform payments at a separately agreed point in time.

## **§ 5.6**

If a customer defaults then Stolberger is entitled, notwithstanding further claims, to demand default interest without proof to the amount of 4% above the 3-Month-Libor (London Interbank Offered Rate) produced for the Euro, unless a higher default interest rate has been agreed upon in an individual case. If Stolberger can prove a higher damage caused by default then Stolberger is entitled to demand this. The customer is entitled to demonstrate Stolberger that no damage or a significantly lower damage has occurred to Stolberger as a consequence of the default in payment.

## **§ 5.7**

If a customer defaults or if Stolberger learns about circumstances, which are suitable to significantly reduce the creditworthiness of the customer (in particular cessation of payments, insolvency), then Stolberger is entitled to retain outstanding deliveries or to execute only against payments in advance or securities. Moreover, Stolberger can demand that goods which have not yet been paid are immediately returned by the customer at his expense.

## **§ 5.8**

The customer can only set off against the claims of Stolberger with undisputed claims or claims which have become res judicata. The customer is only entitled to exercise the right of retention if his counterclaim is based on the same contractual relationship.

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## **§ 6 Reservation of Title/Release of Securities**

### **§ 6.1**

The delivered goods remain in the ownership of Stolberger (“reserved goods”) until all claims of Stolberger, which have arisen on the basis of the business relation and are still outstanding have been paid in final. In case of several claims or current invoice the reservation of title is the security for the balance claim also if individual deliveries of goods have already been paid.

### **§ 6.2**

Pledgings or transfers by way of security of the delivery item by the customer prior to the acquisition of title are not permitted. The claims arising from an insurance or from a tortious act with regard to the reserved goods (including all balance claims from current account) are assigned by the customer for security purposes already at present in full. Stolberger revocably authorizes the customer to collect the claims assigned to Stolberger on his own behalf. This authorization to collect terminates if the customer does not duly fulfil his payment obligations to Stolberger with regard to the reserved goods, if he gets into financial difficulties, execution measures are taken against him or insolvency proceedings with regard to his assets have been initiated or their initiation has been rejected for lack of assets.

### **§ 6.3**

The customer assigns those claims to Stolberger to secure its claims against the customer, which come into being against a third party by the connection of the delivered goods with a property.

### **§ 6.4**

In case of third parties taking over the reserved goods the customer shall advise the property of Stolberger and inform Stolberger immediately in writing.

### **§ 6.5**

In case the customer’s behaviour is contrary to the contract, then Stolberger is entitled, after withdrawal from the contract, to demand the return of the reserved goods or if necessary the assignment of the customer’s claims for return against third parties.

### **§ 6.6**

In case of more than one delivery item serving as security Stolberger is obliged to release all the securities due to Stolberger upon demand of the customer, as far as the realisable value of the securities exceeds the claims to be secured by more than 10% or the nominal amount by more than 50%. The choice of the securities to be released is incumbent on Stolberger’s responsibility.

## **§ 7 Tools, Plans and Drawings, Industrial Property Rights**

### **§ 7.1**

The customer accepts that he does not have any rights with regard to trademarks, patents, utility models and other industrial property rights of Stolberger.

### **§ 7.2**

Stolberger reserves the property and copyrights with regard to tools, samples, sketches, drawings, calculations and other documents produced by Stolberger, even if the customer is proportionally charged

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with these. They must not be made available for third parties. Before passing them on to third parties the customer requires the explicit written consent of Stolberger. Documents belonging to offers have to be returned to Stolberger upon demand if an order has not been placed.

### **§ 7.3**

As far as Stolberger has produced and delivered the delivery item according to drawings, models, samples or other specifications handed over by the customer, he then assumes the guarantee that industrial property rights and copyrights of third parties are not violated. If third parties prohibit Stolberger, referring to such property rights, in particular the production and delivery, then Stolberger is entitled, without the obligation to check the legal situation, to stop all further activities and to claim compensation from the customer. Irrespective of this the customer obliges himself to immediately release Stolberger from all third parties' claims in connection with this with regard to the violation of property rights.

## **§ 8 Violation of Contractual Obligations by Stolberger**

### **§ 8.1**

In case of a violation of a contractual obligation the customer is entitled against Stolberger to the rights according to the statutory provisions in accordance with the following agreements.

### **§ 8.2**

Stolberger is liable for the violation of a contractual obligation as far as a primary performance obligation or another significant contractual obligation has been violated by Stolberger, its legal representatives or its own employees or its vicarious agents.

### **§ 8.3**

Stolberger is liable for the violation of other contractual obligations not mentioned under point 8.2. according to the statutory provisions unless Stolberger pleads that the violation of the obligation is based on non-gross negligence or non-intentional fault of Stolberger itself, its legal representatives, its own employees or its vicarious agents or on gross negligence or intentional fault by the vicarious agents of Stolberger.

### **§ 8.4**

For damages which have not occurred to the delivery item itself, in particular damages from production standstill, loss of profits, loss of use, contractual losses or any other indirect damage or consequential damage Stolberger is only liable – no matter out of which legal ground – under the preconditions of paragraph 8.3 or in case of a defect which has been concealed fraudulently or whose non-existence has been granted.

### **§ 8.5**

The burden of proof for the lack of or the degree of fault is on Stolberger.

### **§ 8.6**

The liability of Stolberger for compensation is limited to the foreseeable, typically occurring damage.

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## **§ 8.7**

Claims for compensation due to damages or losses to goods in transit can only be asserted by the customer against Stolberger, if he has informed Stolberger about such damages or losses within a cut-off period of ten calendar days after arrival of the goods at the place of destination or in case of non-arrival after the date of delivery according to the regulations and if he has kept the goods including the packaging ready for inspection by Stolberger in the case of damage.

## **§ 8.8**

The regulations of paragraphs 8.2 to 8.7 are also valid in case of a tortious liability of Stolberger. The liability according to the compulsory regulations of the product liability act remains unaffected.

## **§ 8.9**

The regulations of paragraphs 8.2 to 8.8 are not valid for claims for compensations for the damage caused by a delay of performance as well as for damages caused by an injury of life, the body or health as well as the right of the customer to declare the withdrawal from the contract due to a violation of an obligation.

## **§ 8.10**

If an agreed date of delivery is exceeded then the customer is entitled to grant Stolberger a grace period of reasonable length. Has the delivery not taken place within this period then the customer is entitled to declare the withdrawal from the contract and to claim compensation instead of the performance. Prior to the expiry of the period the customer is not entitled to derive rights from the fact that Stolberger is temporarily not able to deliver the goods.

## **§ 8.11**

Periods of delivery according to paragraph 2.3 / 3. and grace periods according to paragraph 8.10 are extended in case of an act of God, a strike or a lock-out of appropriate extent if Stolberger is prevented from a timely fulfilment of its obligations not due to its fault. The same applies to operational breakdowns, lack of personnel, lack of means of transport, official interventions, late granting of official licenses as well as in case of late, unduly or insufficient delivery by the supplier of Stolberger, if these circumstances are not due to Stolberger's fault. Stolberger can only refer to the mentioned circumstances if it immediately notifies the customer.

## **§ 8.12**

The rights of a customer due to a violation of contractual obligations by Stolberger become statute-barred after one year. The commencement of the limitation period starts with the passing of the risk to the customer. For legal claims with regard to the product liability act the legal statute of limitations applies.

## **§ 9 Supplementary Regulations with Regard to the Guarantee against Defects**

### **§ 9.1**

Stolberger gives a guarantee that the delivery item is free of defects at the moment of passing the risk.

### **§ 9.2**

Claims due to defects of the delivery item can only be asserted by the customer against Stolberger, if he gives written notice to Stolberger of the respective defect with a precise description within the period of five working days.

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### **§ 9.3**

As far as Stolberger is not at fault, Stolberger is not liable for defects which have been caused by the following circumstances: Inappropriate or improper use of the delivery item, defective installation or rather start-up or handling by the customer or third parties; customary or natural wear, improper maintenance; inappropriate means of operation; defective construction work, unsuitable building ground, chemical, electrochemical or electrical influences. The supplier is also not liable for defective subsequent improvements which have been carried out by the buyer himself or a third party. The same applies to alterations of the delivery item which have been carried out without prior consent of Stolberger.

### **§ 9.4**

Stolberger is entitled at its own choice to subsequently improve parts or to replace parts which turn out defective, as a result of a circumstance existing prior to the passing of risk, with parts free of defects.

### **§ 9.5**

After communication with Stolberger the customer has to grant the required time and opportunity for the subsequent improvements and spare part deliveries, which Stolberger considers necessary, otherwise Stolberger is released from the liability for the consequences arising from this. Only in urgent cases of risk to industrial safety or rather for the warding off of disproportionately large damages is the customer entitled to have the defect removed by himself or third parties to the expense of Stolberger. In such a case Stolberger has to be informed immediately.

### **§ 9.6**

If a notice of defects turns out to be not justified, then the costs of a subsequent improvement or delivery of spare parts by Stolberger have to be reimbursed by the customer.

### **§ 9.7**

Within the frame of statutory provisions – in consideration of the legal exceptions – the customer has the right to withdraw from the contract only after Stolberger has let expire, without results, a granted reasonable grace period for subsequent improvements or spare parts delivery due to a material defect. Is the defect only of irrelevant nature then the customer is only entitled to the right of the reduction of the contract price. The right of a reduction of the contract price remains excluded otherwise.

### **§ 9.8**

The running of the limitation period according to paragraph 8.12 remains unaffected from a performed subsequent improvement or spare parts delivery.

## **§ 10 Product Liability**

If Stolberger is held responsible with regard to the nature and quality of the customer's products manufactured by the delivery item due to statutory provisions according to the principles of product liability then the customer is obliged to release Stolberger from a possible claim and to reimburse possible rendered services as well as the reasonable costs of its legal defence.



## **§ 11 Data Protection**

The customer takes notice and agrees that Stolberger is allowed to collect, store, process, use, transfer to third parties and to erase all customer data from the business relation within the frame of the purpose. The data e.g. concern address, supply quantity and invoicing data.

Stolberger transfers invoicing data to debt collection agencies, as far as it is necessary for the pursuit of legitimate interests of Stolberger.

Stolberger ensures that the customers' interests which are worthy of protection will not be impaired.