

## **General Sales and Delivery Terms and Conditions of Hebmüller SRS Technik [Technology] GmbH**

### **§ 1 Sphere of applicability**

1. Our following Sales and Delivery Terms and Conditions shall apply to all agreements concluded between the Buyer and us, even in the future, regarding sales and delivery transactions. They shall also apply to all future business relationships with the Buyer even if they have not yet been expressly agreed provided that the Buyer is an entrepreneur, juridical person under public law or a special foundation under public law.

2. We shall not recognize any deviating terms and conditions of the Buyer, the validity of which are not expressly acknowledged or approved in writing by a member of our executive management even if we have not expressly objected to them. Our following Sales and Delivery Terms and Conditions shall also then apply even if we, while being aware of opposing or deviating terms and conditions of the Buyer, unconditionally carry out the Buyer's order.

3. Any deviations from our Business and Delivery Terms and Conditions are only then effective if a member of our executive management has expressly acknowledged them or confirmed them in writing. This shall also apply with regards to the rescission of the written form requirement.

4. All agreements which are concluded between the Buyer and us for the purpose of the execution of the agreement shall require the approval of a member of our executive management in order to be effective.

### **§ 2 Realisation of the agreement**

1. If we have not expressly made reference to them in writing as being binding, our offers are always non-binding and free of obligation. This shall also apply to any follow-up orders made based upon previous offers, price lists as well as circulars and similar advertising materials. The agreement is only then considered to be concluded when a member of our executive management has confirmed the acceptance of the order or the delivery has been carried out. In the event that an offer is made with a binding timeframe and timely acceptance of the offer is made, our written order confirmation shall be binding for the scope of the delivery if no timely confirmation of the order has been made. We reserve the right to correct errors in offers, order confirmations and invoices. Ancillary agreements and changes are only then effective if a member of our executive management has expressly acknowledged them or confirmed them in writing.

2. The information contained in brochures, catalogues, advertisements and price lists or the documents related to the offer, illustrations, drawings, models, brochures, technical data, catalogues and other technical data are considered to be non-binding. They serve merely for description purposes and are supposed to communicate only a proper introduction to the goods described therein. The aforementioned data are only then considered to be a contractual component if and to the extent that they have been expressly confirmed as being binding by a member of our executive management. If they are enclosed with or form the basis for our offers / order confirmations, then they are considered to have only approximate validity subject to the dimensions and proportions which are to be submitted by the Buyer.

3. We reserve our rights of ownership and/or copyrights to drawings, sketches, calculations and other documents.

4. We shall be entitled to make changes to the production, design, materials or upgrades of goods or portions of our services.

5. We reserve the right to make changes in and improvements to design and production which are reasonable for the Buyer or which are required owing to technical, statutory or governmental directives as well as quality, design and colour which are customary for the industry. Design- and form-related changes that are not customary for the industry are permitted unless the change or deviation is not reasonable for the Buyer in the individual case.

6. Written notifications made by us shall be considered as having been received by the Buyer based upon customary postal services when they have been sent to the last-known mailing address, fax number or e-mail address of the Customer and we are able to document this. Excepted from this presumption of acceptance shall be declarations of special importance, particularly terminations, declarations of rescission and the setting of notice periods.

### **§ 3 Price and payment**

1. In the absence of any agreement to the contrary, our prices listed on the price lists and in the catalogues are understood to be ex works without packaging plus the VAT in its respectively valid amount.

2. All invoices shall be payable immediately upon invoicing with no discounts (due date). Beginning 30 days after the due date, we shall charge payment default interest in the amount of eight percentage points above the respective base lending rate of the European Central Bank. We reserve the right to document more extensive claims to higher payment default interest amounts.

3. Money orders and checks shall be accepted only after a special written agreement has been concluded and only for payment purposes. Subject to their receipt, checks shall be credited with the value date of that day on which we definitively are freely able to dispose of the funds. All resulting costs shall be assumed by the Buyer.

4. If the Buyer is arrears with any agreed partial payment, then we may make the entire remaining balance of the payment immediately due and payable. If the Buyer is late with the payment, then we may declare the rescission of the agreement and demand damage compensation in lieu of performance after the fruitless lapsing of a notice period that has been properly set. The determination right of the Buyer regarding which payment claims are fulfilled by its payments shall be contracted-out owing to the statutory debt repayment directives of § 366 Para. 2 BGB [**Civil Code**].

### **§ 4 Offsetting**

The Buyer may offset against claims which we have against the Buyer or may validly assert any right of retention only if its counterclaim has been legally upheld, is undisputed or we have acknowledged it.

## **§ 5 Right of retention**

1. The delivered goods shall remain our property until all payment claims have been fulfilled in full from the business relationship with the Buyer (including documentation costs) from the main and ancillary business transactions. In the event that ongoing billing is made, reservation of ownership shall be considered to be security for our payment claim for the balance owed.

2. In the event that third parties assert legal claims against the goods subject to reservation of ownership or the payment claims or other security assigned to us, particularly within the parameters of compulsory debt enforcement proceedings, the Buyer shall make reference to our ownership and promptly notify us in writing of the third-party claims which have been threatened, are imminent or have already been asserted while being required to submit the documents required for an intervention. This shall also apply to restrictions of any other type. Provided that the third party is not able to reimburse us for the legal or extra-judicial costs for the assertion of our rights, then the Buyer shall be liable for the costs we have incurred.

3. The Buyer shall be revocably entitled to process or combine the objects in customary business operations that we have supplied. The processing or combining shall be done for us as the manufacturer in accordance with § 950 BGB so that we acquire ownership to the objects created through the processing or combining without our incurring obligations in this regard. To the extent that our ownership to the goods ceases to be valid through the processing, then the Buyer shall be obliged to grant us co-ownership to the newly created goods to the extent that it itself is the (co-)owner.

4. The Buyer shall be entitled to resell the goods in proper business dealings that have been supplied or created owing to processing or handling, mixing or combining, but nonetheless while making reference to the retention of ownership. The payment claims of the Buyer from a resale of the reserved goods shall already now be assigned to us in the invoiced final amount (including VAT) in order to secure all our payment claims from the business relationship and certainly and certainly regardless of whether these goods are sold with or without processing and whether they are sold to one or more end customers. We already now accept this assignment. If the reserved goods are sold by the Buyer together with other goods not purchased from us, then the payment claim from such a resale shall be assigned in the proportional invoiced amount of the other goods sold. In the event that the goods are sold to which we have proportional co-ownership in accordance with Clause 3 of this paragraph, then we shall be assigned a portion of the payment claim corresponding to the proportional co-ownership stake. The same shall apply if the reserved goods, alone or together with other goods, are the object or the partial object of a contractual agreement for work and services or a similar contractual agreement. The Buyer shall be authorised to collect the assigned payment claims as long as it promptly fulfils its contractual obligations owed to us.

Upon the Buyer's request, we shall be obliged to release the security to which we are entitled insofar as the realizable value of the security exceeds the payment claims to be secured by more than 10 %; it shall be our right to choose the security to be released.

In the event that the Buyer has committed contractual violations, particularly in the event of payment default, then we shall be entitled to take back the goods that have been supplied subject to reservation of ownership; the Buyer shall be obliged to return the goods. In the event that we take back the goods, this shall not constitute a rescission of the agreement unless we have expressly declared this in writing.

After we take back the goods that were delivered to which we reserved ownership, we shall be entitled to exploit them. The exploitation proceeds must be offset against the Buyer's liabilities less any appropriate exploitation costs.

## **§ 6 Delivery timeframe**

1. Delivery dates and delivery deadlines or timeframes which have not been expressly confirmed as being binding by a member of our executive management shall be considered to be exclusively non-binding information. The delivery timeframe shall begin upon the receipt of the order confirmation by the Buyer, but nonetheless by no later than three days after the sending of the order confirmation. It shall not begin before the submission of the documents, approvals and releases which are to be obtained by the Buyer as well as not before the clarification of all technical questions and not before the receipt of the agreed down payment. Furthermore, the adherence of the delivery timeframe shall require the fulfilment of obligations upon the part of the Buyer. We reserve the right to assert the defence of non-fulfilment of the agreement.

2. The delivery timeframe shall be considered to have been met if the delivery object has left the factory or the readiness for shipment has been made before the delivery timeframe lapses. Our delivery obligation shall be subject to the timely and correct supplying having been made by our own suppliers unless the untimely and incorrect deliveries to us by our own suppliers are our fault.

3. Force majeure events shall entitle us – also within the delay period – to suspend the rendering of performance for the duration of the hindrance. Force majeure events shall be considered to be all sets of circumstances for which we are not responsible and which it impossible or unreasonably difficult for us to render contractual performance, e.g. legal strikes or legal lockouts, war, importing and exporting bans, energy and raw material shortages, governmental measures and untimely deliveries being made to us by our own suppliers for which we are not responsible. If the hindrance lasts longer than two months, then the Buyer shall be entitled, after the setting of an appropriate notice period, to withdraw from the agreement if it can document that the complete or partial fulfilment of the agreement that is still owed is no longer of interest to it owing to the delay.

4. If the shipment is delayed owing to the Buyer's request to do so, then it shall be charged the costs incurred for storage, but nonetheless at least 5 % of the invoiced amount, for each month that it is stored at our factory beginning with the month after the notification of the readiness for shipment. Damages created through delivery acceptance default shall be hereby excluded. However, we shall be entitled, after setting an appropriate notice period which lapses unsuccessfully, shall be entitled to dispose of the delivery object in another manner and to make deliveries to the Buyer with an appropriately extended timeframe.

4. We shall be entitled to make partial deliveries and render partial services provided that this is not unreasonable to the Customer.

5. If delivery is not made in a timely manner, then the Buyer must set a notice period for us which must be at least fourteen working days. All warning letters sent and notice periods set by the Buyer must be in writing to be effective. Expanded liability in accordance with § 287 BGB shall be excluded.

## § 7 Shipment and transfer of risk

1. Risk shall be transferred to the Buyer when the goods are turned over at the place that has been designated for the shipment, nonetheless by no later than when they leave our factory or warehouse, thus in the event of "delivery free destination" regardless of who assumes the freight costs and whether the shipment is made from the place of performance. If the shipment is delayed owing to sets of circumstances for which the Buyer is responsible, then risk shall be transferred to the Buyer at the point in time when the notification of readiness for shipment or readiness for pick-up of the goods is made.

2. In the event that there is transport-related damage to the goods, the Buyer must promptly submit a factual report to the competent centres (transport company) and notify us in writing. Notwithstanding its warranty rights, any goods delivered must be accepted by the Buyer even if they have minor defects.

## § 8 Warranty for defects in the delivered goods

1. In the event of a notification of defects which is justified and timely in accordance with § 377 HGB [**Commercial Code**], we shall provide a warranty for the agreed quality features of the goods we have supplied in accordance with the directives of purchasing law and the following provisions.

2. In the event that there are documented material defects, we shall honour the warranty by, at our discretion, either supplying the Buyer with new, flawless goods (replacement delivery) or eliminating the defect (rectification).

In the event that a rectification is made, then the Buyer must, at our request, make a detailed notification of defects and submit written reports of defects and other data which are suitable for the analysis of the defect. Furthermore, upon request, it must either send the defective purchased goods for rectification to a centre to be designated by us or make them available on-site for attempts at rectification. We shall assume the rectification costs provided that they are not increased owing to the fact that the delivered object has been moved to another location than the contractually designated location after delivery was made. The rectification shall be considered as having been unsuccessful after a second attempt has been made in vain unless, owing to the delivered goods, further attempts at rectification are appropriate and reasonable to the Buyer.

In the event that there are justified legal defects, we shall honour the warranty by rendering subsequent performance in which we provide the Buyer with a legally flawless right of use to the goods delivered or, at its choice, to equivalent goods which are exchanged or modified.

If the Buyer receives erroneous mounting instructions, we shall be obliged to supply flawless mounting instructions and this also only then if the flaw in the mounting instructions prevents proper mounting.

3. If the subsequent performance is unsuccessful, then the Buyer may withdraw from the agreement or reduce the purchase price. The requirement for this shall be the fruitless lapsing of a written notice period of an appropriate length that has been set unless the setting of a notice period is dispensable.

4. If the Buyer, owing to a legal or material defect, opts to withdraw from the agreement, then it shall not be entitled to demand damage compensation owing to the defect. In the event of the rescission of the agreement, the Buyer shall be liable for the deterioration, loss

and for any usage not undertaken. This is not limited to its own customary due care, but rather comprises any kind of responsibility.

5. We shall provide damage compensation or reimbursement of futile expenditures owing to a defect within the parameters of the boundaries specified in § 9 of these Sales and Delivery Terms and Conditions.

6. Statements upon our part regarding the quality features of the goods shall not be considered to be a warranty upon our part for quality features unless the parties expressly reach agreement upon this. In the event that a warranty is provided, the rights of the Buyer shall be specified in the warranty declaration provided by us. The Buyer must assert its rights from the warranty declaration within two months after the warranty claim is created (limitation period). Public statements, praise or advertising shall not be considered to be quality feature information about the goods.

7. If the warranty pertains to recourse being sought by the Buyer after it has a claim successfully asserted against it in accordance with the directives regarding the purchasing of consumer goods, the claims for recourse shall remain unaffected owing to the directives regarding the purchase of consumer goods. § 9 of these Sales and Delivery Terms and Conditions shall be applicable to the claim for damage compensation. The Buyer shall be obliged to promptly notify us when it becomes aware of any claims for recourse that are asserted within the supply chain. Otherwise, the goods shall be considered to be approved. The legal claims for recourse of the Buyer against us shall apply only to the extent that the Buyer has concluded no agreement with its end customer that extends beyond the legal claims for defects. The claim of the Buyer to reimbursement of expenditures shall be excluded for such expenditures which would not have been incurred for the subsequent performance if the Buyer has taken such precautions. If the goods are stored at the Buyer's for a period of time that is substantially longer than the period of time that is customary for the industry, then the Buyer must demonstrate and document that the goods already had the defect which was reported at the point in time that the transfer of risk was made.

8. In particular, we shall provide no warranty for the following damage incurred owing to the following reasons provided that they are no attributable to our negligence: Erroneous or incomplete information provided by the Buyer regarding the operational conditions of the purchased goods, unsuitable or improper use, flawed mounting or commissioning by the Buyer, natural wear and tear, flawed or negligent handling, unsuitable operational resources, flawed maintenance or repair work, or chemical, electro-chemical or electrical influences.

## § 9 Liability restrictions

1. Notwithstanding the liability restrictions, we shall be liable in accordance with the statutory directives for loss of life, physical injury and damage to health which is attributable to negligence or intentional wrongdoing upon our part, upon the part of our legal representatives or vicarious agents as well as for damages which are encompassed by liability in accordance with the Produkthaftungsgesetz [**Product Liability Act**] as well as for all damages which are caused by contractual violations based upon intentional wrongdoing or gross negligence as well as malice upon our part or upon the part of our legal representatives or vicarious agents. If we have made assurances regarding quality features and/or durability for the goods or portions of the same,

we shall also be liable owing to such assurances. For damages which are based upon the lack of a guaranteed quality feature or durability, but which are not directly to the goods themselves, we shall however only then be liable if the risk for such damages is clearly covered by the guaranteed quality features and durability.

2.

We shall also be liable for damages which are caused through the violation of such contractual obligations that are based upon simple negligence, the fulfilment of which only then makes possible the proper execution of the agreement and upon the adherence to which the Buyer may routinely depend and trust. The same shall apply if the Buyer is entitled to claims for damage compensation in lieu of performance. However, we shall be liable only if the damages are typically associated with the agreeable, are foreseeable and should be avoided through the obligation that has been violated; in these cases, our liability shall be limited to EUR 300,000 per case of damages.

3.

Any more extensive liability upon our part is excluded without taking into consideration the legal nature of the claim being asserted; this shall apply particularly also for tortious claims or for claims for reimbursement of expenditures instead of performance. To the extent that our liability is excluded or restricted, this shall also apply to the personal liability of our salaried staff, employees, workers, representatives and vicarious agents.

4.

A statute of limitations period of one year shall apply to any claims for defects asserted against us. This shall not apply for goods which, based upon their customary manner of use, has been used for a structure and which has caused its defectiveness or if we have committed malice. The statute of limitations period shall begin upon the lapsing of the point in time specified in § 199 Para. 1 BGB. It shall begin to run by no later than when the maximum timeframes specified in § 199 Paras. 2 to 4 BGB lapse. In the event of legal defects which are based upon the in rem right of a third party, owing to which the return of the goods may be demanded, the statute of limitations period shall amount to 10 years.

In the event of the negligent loss of life, physical injury or damage to health which has been caused by us, our legal representatives, employees or vicarious agents as well as in cases in which we, our legal representatives, employees or vicarious agents have committed intentional wrongdoing or gross negligence as well as in the cases involving liability based upon the Produkthaftungsgesetz, the statutory statute of limitation periods shall apply.

The suspension of the statute of limitation period for claims arising from or related to the contractual relationships between the parties in accordance with § 203 BGB shall end at the point in time in which we or the Buyer refuse to continue negotiations regarding the claim or the sets of circumstances substantiating the claim. If one of the parties has not expressly declared in writing that the negotiations have been unsuccessful, then the refusal to continue negotiations shall be considered to be valid six months after the sending of the last correspondence, the object of which is the claim or the sets of circumstances substantiating the claim.

#### **§ 10 Access directives in accordance with EN/AS ISO 9100**

In the event that parts are ordered for aeronautics and aerospace travel, we shall be obliged to grant governmental agencies and end customers access to the commercial and operational space of our company in accordance with EN/AS ISO 9100 and to impose a corresponding contractual obligation upon our own suppliers so ensure that they grant the governmental agencies and end customers access to the business and operational space of their companies in accordance with EN/AS ISO 9100.

#### **§ 11 Place of performance, legal venue, applicable law and severability clause**

Provided that nothing to the contrary is stated on the order confirmation, the place of performance – as well as the exclusive legal venue for all disputes arising from the contractual relationship – shall be the commercial residence of our company. The contractual relationship shall be subject to German law. The application of the United Nations Convention on Contracts for the International Sale of Goods – CISG) shall be excluded.

In the event that individual provisions of the agreement concluded between us and the Buyer or these terms and conditions should be or become invalid, then this shall not affect the validity of the remainder of the agreements concluded. The invalid provision shall be replaced by a valid provision which most closely corresponds to the commercial intent of the parties. The same shall apply in the event that the agreement contains any gaps or omissions.

Neuss, March 2007, Hebmüller SRS Technik GmbH