

**§ 1 Applicability of these International Terms and Conditions for the Sale of Goods and the Provision of Services**

- (1) The terms and conditions set out in these International Terms and Conditions for the Sale of Goods and the Provision of Services (hereinafter “International Terms and Conditions”) shall form an integral part of the contract of sale and/or the contract of service (individually and collectively “Contract”). The subject matter of the Contract can be the sale of goods. The subject matter of the Contract can also be the provision of services according to § 3 (2) of these International Terms and Conditions, that is – in particular, without limitation – the design, construction and erection of hot cell facilities (including the delivery of goods which are subject to any services or which need to be delivered in the connection with the provision of services) and other engineering business and construction contracts. These International Terms and Conditions apply exclusively. The customer’s terms and conditions which conflict or differ from these International Terms and Conditions and/or from the legal provisions do not apply, even if we do not object to them or render performance or accept the customer’s performance.
- (2) These Terms and Conditions do not apply if the goods and/or services are supplied for personal, family or household use and we knew or ought to have known at any time before or at conclusion of the Contract that the goods and/or services were supplied for any such use. The customer declares that the goods or services respectively are not ordered for personal, family or household use.

**§ 2 Formation of the Contract**

The formation of the Contract always requires a written order of the customer. All quotations previously made by us are non-binding. The conclusion of the Contract always requires our written order confirmation (hereinafter the “Order Confirmation”), which we may issue within forty-five (45) calendar days after receipt of the customer’s order. We may request you to sign our Order Confirmation for the Contract to be concluded.

**§ 3 Applicable law**

- (1) The Contract and these International Terms and Conditions are governed by the United Nations Conventions of 11 April 1980 on Contracts for the International Sale of Goods (UN Sales Convention / CISG) in the English version and all legal questions beyond the scope of the CISG are gov-

erned by the Swiss law of obligations (Obligationenrecht). The CISG also applies to all agreements as to the jurisdiction of courts and arbitral tribunals.

- (2) The provisions of the CISG shall also apply to contracts between the customer and us in which the predominant part of our obligations consists in the supply of labour or services or works (collectively herein referred to as “services”), e.g. the design, construction and erection of hot cell facilities (including the delivery of goods which are subject to any services or which need to be delivered in the connection with the provision of services) and other engineering business and construction contracts. As regards contracts for the provision of services, the provisions of the CISG therefore apply mutatis mutandis and are thus to be understood as referring to the provision of services (in the context of Art. 35 (1) CISG, this means, for example, that instead of the delivery of goods we have to provide services which are of the quantity, quality and description required by the Contract and which are contained or packaged in the manner required by the Contract). Also with regard to a Contract for the provision of services, all legal questions beyond the scope of the CISG (taking into account the afore-stated provisions) are governed by the Swiss law of obligations (Obligationenrecht).
- (3) Should commercial terms be used the Incoterms® 2020 of the International Chamber of Commerce apply taking into account the provisions stipulated in these International Terms and Conditions.

**§ 4 Potential further steps in the performance of the Contract provided the Order Confirmation explicitly states so**

The performance of the Contract may include one or more of the following steps, provided the respective step is explicitly stated in our Order Confirmation:

- (1) Together with the Order Confirmation or subsequently thereto, we will inform the customer of an approximate schedule for the provision of the services. This approximate schedule is subject to change and dependent upon various factors, which are to some extent outside our sphere of control and/or also depend upon the customer’s obligation to cooperate as further specified in our Order Confirmation, which may include inter alia, without limitation, the timely approval of the Functional Design Specification and the preparation of the Site. A change in the approximate schedule does not entitle the customer to any

rights or claims against us. The customer may only claim damages for a delay of delivery in accordance and subject to the limitations in § 13 of these International Terms and Conditions.

- (2) We will provide to the customer the Functional Design Specification for the customer to give its written approval. If the customer disagrees with the Functional Design Specification, the customer is obliged to specifically state and substantiate its objections.
- (3) Prior to the delivery of the goods which are subject to any services or which need to be delivered in the connection with the provision of services, a factory acceptance test ("FAT") will be performed at our factory. The customer will be provided with a date for the FAT at least two (2) weeks prior to the FAT and we will try to reasonably adjust the date to the customer's availability. If the customer attends such FAT, the customer needs to give notice to us of any defects which were reasonably detectable during the FAT and record such in the FAT-protocol. In case the customer gives notice of any defects, we will reasonably take such notice of defects into consideration, but the customer may not prohibit us from delivering the goods.
- (4) After the goods which are subject to any services or which need to be delivered in the connection with the provision of services have reached the site where they shall be installed ("Site"), we will perform such installation in accordance with the then current approximate schedule, provided the customer has informed us of the goods having reached the Site.
- (5) Once the installation at the Site has been completed, the customer and we will perform a Site Acceptance Test ("SAT"). The customer is obliged to sign the SAT-protocol, unless the during the SAT significant defects are detected which materially hinder the use of the goods or services delivered.

**§ 5 Specifications of the goods and/or services; third party rights**

- (1) The goods and/or services to be delivered have to conform to the specifications and quality requirements set out in our Order Confirmation. Deviating from the foregoing, if a Functional Design Specification has been made by us and confirmed by the customer, only the specifications stated in the Functional Design Specification shall be decisive. To the extent no specifications or quality requirements are agreed upon, the goods and/or services conform with the Contract if they are fit for the purpose which is usual in

Germany and fit for the purpose for which goods and/or services of the same description are usually used for in Germany. Unless otherwise explicitly agreed to, the goods and/or services do not have to conform to any laws or regulations existing outside of Germany. Second-hand goods are delivered without any liability for their conformity.

- (2) Without the need to get the customer's prior approval, we reserve the right to alter the design of the goods to be delivered and to make changes to the material to the extent this is customary in trade or it is necessary to meet agreed specifications or it entails a technical improvement. In case of a Contract for the provision of services such alterations affect the footprint and/or the installation layout, we will consult with the customer to get the customer's prior approval which shall not be unreasonably withheld.
- (3) Should the customer intend to use the goods and/or services in circumstances which are unusual or which could entail a particular risk to the safety and health of any person or to the environment not already known to us, the customer has to inform us in writing about these intentions before concluding the Contract.
- (4) Rights and claims of third parties (in particular rights and claims based on title or industrial property rights) only constitute a defect in title if these rights and/or claims are in force and registered in Germany and impede the use of the goods and/or services in Germany.

**§ 6 Obligation to deliver; passing of risk**

- (1) We have to deliver the goods and/or provide the services referred to in the Order Confirmation including a packaging that is suitable for the means of transportation.
- (2) Unless otherwise explicitly agreed to, the delivery of goods and/or the provision of services has to be made FCA Incoterms® 2020 at the place of delivery indicated in the Order Confirmation, or – if no place of delivery is indicated in the Order Confirmation – FCA Incoterms® 2020 at our premises in Rossendorfer Ring 42, 01328 Dresden/Germany. We are not obliged to inform the customer that the goods and/or services have been delivered or that the carrier or another person nominated by the customer has failed to take the goods and/or services within the time agreed. Even if a C- or D-clause of the Incoterms has been agreed upon, our non-binding quotation as well as our order confirmation may list transport

costs which the customer is obliged to pay in addition to the agreed price for the goods or services.

- (3) If customer bears the risk of transport according to the agreed Incoterms-clause and the transport risk materialises, the customer is nevertheless obliged to pay the agreed price, but less the any stated installation costs (or in the absence of installation costs explicitly stated, the usual installation costs), insofar as the installation has not been performed albeit originally being part of our obligations.
- (4) Adherence to all dates respectively all periods stated in the Order Confirmation and any approximate schedule (§ 4 (1) of these International Terms and Conditions) issued by us is not of the essence and non-adherence to the dates or the periods respectively does not constitute a fundamental breach of contract. If delivery periods are agreed to, we reserve the right to determine the exact delivery time within the delivery period. If we have not adhered to binding dates or periods, and this is not the result of any situations covered by § 6 (5), (6) and/or (7) and/or § 8 of these International Terms and Conditions, but such delay is the result of us negligently, grossly negligently or intentionally breaching our obligation and not caused by the customer or the customer's failure to comply with his obligation to cooperate, then the customer and we shall reasonably agree on a mitigation plan and any additional period of time for the performance of our obligations, and in the absence of such agreement the customer shall fix an additional period of time for the performance of our obligations which shall not be less than sixty (60) calendar days, and only after unsuccessful expiration of such additional time period a delay shall exist which may entitle the customer to damages in accordance with the provisions in § 13 (3) of these International Terms and Conditions.
- (5) Without prejudice to § 6 (6) and (7) and § 8 of these International Terms and Conditions, all dates and periods are dependent upon the customer performing all of his obligations in due time. In particular, the customer has to procure or confirm any necessary permits, drawings etc. and make agreed payments in due time.
- (6) Without prejudice to § 6 (5) and (7) and § 8 of these International Terms and Conditions, we may postpone the dates and periods for the delivery of goods and the provision of services if – through no fault of our own – our sub-suppliers do not deliver to us any necessary goods or components as originally contractually agreed. We

are obliged to inform the customer of such situations once they are certain.

- (7) Without prejudice to § 6 (5) and (6) and § 8 of these International Terms and Conditions, the customer is made aware of the fact that to deliver goods and/or to provide services we are very often required to apply for an export license, which needs to be issued by the German Federal Office of Economics and Export Control (Bundesamt für Wirtschaft und Ausfuhrkontrolle, also abbreviated as BAFA). The processing of such an application can take several months. We have no influence on the duration of the processing. The agreed deadlines and in particular the delivery of goods and the provision of services are subject to the granting of the export license. If the export license is finally refused, it is agreed that this constitutes a case of force majeure according to § 8 of these International Terms and Conditions. In this case, both we and the customer are entitled to declare the Contract avoided.
- (8) We are entitled to make partial deliveries of the goods and/or of the services and to invoice these separately.
- (9) The passing of risk takes place with delivery in accordance with § 6 (2) of these International Terms and Conditions. Should the customer fail to take delivery, the risk passes at the time the customer fails to take delivery or from the day the goods and/or provided services are ready for dispatch, whichever is earlier.
- (10) In addition to our statutory rights we are entitled to suspend the performance of our obligations if there are reasonable indications that the customer will not perform his obligations under the Contract, in particular not be able to pay the agreed price in due time.

#### **§ 7 Delivery note, invoice and other documents**

- (1) We will provide the customer with a delivery note issued according to our standard.
- (2) Irrespective of the Incoterms®-clause used, we are not obliged to clear the goods and/or provided services for export. We will however at the customer's risk and expense apply for any necessary export licences and formalities as regards customs provided that the customer has provided us with all necessary information.
- (3) We will provide the customer only with such documents explicitly stated on the Order Confirmation.

#### **§ 8 Force majeure**

Any inability to supply as a result of force majeure or other unforeseen incidents outside our responsibility including, without limitation, strike, diseases, pandemics, acts of public authorities (including the non-issuance of the export license or the denial of the approval by the BAFA according to § 6 (7) of these International Terms and Conditions), subsequent cease of export or import opportunities shall, for their duration and in accordance with their impact, relieve us from the obligation to comply with any agreed delivery period and delivery time as well as any other obligation. This also applies if the aforementioned situations occur with our suppliers.

#### **§ 9 Obligation to pay the price of the goods or services respectively**

- (1) Unless otherwise agreed to in the Order Confirmation, the following shall apply: The customer is obliged to pay the agreed purchase for the goods or services respectively as well as all agreed additional costs (e.g. costs for packaging, transportation etc.) as well as any export fees that are charged against us to the bank account nominated by us. The place of payment is 01328 Dresden/Germany. Banking fees accrued outside of Germany will be borne by the customer. The payment shall be made without any deductions and is due for payment on the date or within the time limit as stated on the Order Confirmation. A time limit for payment stated on the Order Confirmation shall be calculated from the date of invoice. In the absence of any payment dates or time limits stated on the Order Confirmation, payment shall be made within 10 (ten) calendar days after date of invoice and the delivery of goods and/or services. The customer's acceptance of the goods is no precondition for the payment to become due.
- (2) The agreed prices shall exclude any statutory VAT applicable at the date of delivery.
- (3) We are only obliged to pay such fees explicitly agreed with the customer.
- (4) The customer is only entitled to exercise a lien or to suspend his performance if this is based on the same transaction as well as based on a due and undisputed or finally adjudicated counterclaim of the customer.
- (5) The customer may only offset any claims insofar as the customer's counterclaim is acknowledged, undisputed or assessed in a legally binding judgement.
- (6) If and till such time the customer is in arrears with payment of the price, the customer is obliged to

pay interest at the rate of nine (9) percentage points above the base rate of the German Central bank per annum.

#### **§ 10 Non-Conforming goods or services; goods or services with a defect in title**

- (1) The goods and/or services do not conform to the contract if at the time the risk passes they significantly deviate from the requirements set out in § 5 (1) to (2) of these International Terms and Conditions.
- (2) The goods and/or services are not free from rights or claims of third parties if at the time the risk passes they significantly deviate from the requirements set out in § 5 (4) of these International Terms and Conditions.

#### **§ 11 Duty of examination and notification**

- (1) Without prejudice to the legal provisions, the customer is obliged to examine the goods or services respectively comprehensively in respect of deviations as regards type, quantity, quality and packaging. If necessary, the customer is obliged to conduct the examination with the help of external third parties.
- (2) Notice of non-conformity has to be made in within ten (10) calendar days. For very obvious non-conformities, the period for such notification starts with the delivery of the goods and or the provision of services, in all other cases after the customer has discovered the non-conformity or ought to have discovered it. Deviating from the foregoing, if a SAT has been agreed upon, any period to give notice of non-conformity starts on the day the SAT starts. Notice of non-conformity has to be given in writing. The notice of non-conformity has to clearly indicate and describe the non-conformity in such a way that we can take remedial actions.
- (3) Apart from the aforesaid as well as with respect to defects in title, the statutory provisions apply.

#### **§ 12 Limitation period**

Without prejudice to claims resulting from a malicious, grossly negligent or intentional conduct as well as claims due to injury of life, body or health, the customer's claims in respect of the delivery of non-conforming goods or services respectively as well as goods or services respectively with a defect in title become time-barred one (1) year after delivery in accordance with the agreed Incoterm-clause. However, deviating from the foregoing, if a SAT has been agreed upon, without prejudice to claims resulting from a

malicious, grossly negligent or intentional conduct as well as claims due to injury of life, body or health, the customer's claims in respect of the delivery of non-conforming goods or services respectively as well as goods or services respectively with a defect in title become time-barred one (1) year after the SAT or sixteen (16) months after delivery in accordance with the agreed Incoterm-clause, whichever is earlier. If the delivery is postponed or fails for reasons for which the customer is responsible, then instead of calculating the aforesaid time periods as of the delivery in accordance with the agreed Incoterm-clause, they shall be calculated as of the date of notification of readiness for dispatch. For second-hand goods § 5 (1) sentence 4 of these International Terms and Conditions applies. The delivery of substitute goods and/or services or the repair of delivered goods and/or services does not lead to a restart or suspension of the limitation period.

**§ 13 Remedies in case of non-conforming goods and goods with a defect in title; limitation of liability**

- (1) In case of delivery of non-conforming goods and/or services, the customer can claim delivery of substitute goods and/or services or declare avoidance of the Contract only in accordance with the legal provisions.
- (2) To the extent any costs associated with performing remedies are increased by the fact that the customer has removed the goods and/or services to a place not stated in the Order Confirmation or, in the absence of such an indication, to a place other than the customer's place of business, these costs will be borne by the customer.
- (3) **If we deliver non-conforming goods and/or services, goods and/or services with a defect in title or breach any other obligation resulting from the Contract or the business relationship with the customer, the customer is entitled to demand damages only in accordance with the following provisions and any recourse to concurrent bases of claim (in particular of a non-contractual nature) is excluded:**
  - a. **We are not liable for the conduct of our suppliers or subcontractors. Neither are we liable for damages to which the customer has contributed.**
  - b. **The customer has to prove that either our directors or employees or other members of staff have deliberately or negligently breached contractual obligations owed to the customer.**

- c. **In case of liability, the liability for delay is limited to 0,5 per cent for each full week of delay, up to a maximum of 5 per cent of the net price of the goods and/or services delivered late or not at all, and in case of remedies because of delivery of non-conforming goods or services and/or goods or services with a defect in title and in case of all other breaches of obligations is limited to the net price of the goods and/or services affected.**
- d. **Irrespective of § 13 (3) c., we are not liable for loss of profit, damages for interruption of production and loss of usage.**
- e. **The aforesaid limitations in § 13 (3) do not apply**
  - i. **to injury of life, body or health,**
  - ii. **if we have acted maliciously, grossly negligent or intentionally,**
  - iii. **if we are liable according to mandatory product liability laws, and**
  - iv. **to liabilities which may not be excluded or limited according to the applicable laws.**

- (4) Apart from the aforesaid, the statutory provisions apply.

**§ 14 Our right to declare the Contract avoided**

Without prejudice to the legal provisions, we are entitled to declare the Contract avoided if

- a) the customer, despite our written request, does not fulfil its obligations to cooperate (see in particular, without limitation, the obligations to cooperate in § 4 (1) of these International Terms and Conditions) or does not fulfil them in time; or
- b) an export license to be issued by the BAFA (see § 6 (7) of these International Terms and Conditions) is not issued or revoked for reasons beyond our control.

**§ 15 Right to use software; rights in documents etc.**

- (1) In case the goods and/or services include software, with the delivery of the goods or services respectively the customer is hereby granted a non-exclusive, royalty-free license to use the software, but strictly and only in connection with the goods and/or services under the Contract. The customer is not entitled to copy the software.
- (2) We retain all intellectual property rights to all documents, pictures, drawings etc. (collectively "Documents") which we have created and/or provided in connection with the performance of our obligations under the Contract. Such Documents shall belong exclusively to us.

#### **§ 16 Other provisions**

- (1) Title of the goods and services that have been delivered remains with us until all of our claims against the customer have been settled. The customer is obliged to take all measures necessary for the protection of our property and ensure that our title is not prejudiced. If this is necessary for a valid reservation of our title, the customer in particular undertakes to arrange for any necessary entry in the public registers in the country of location of the goods at its own expense.
- (2) We are not obliged to perform any obligations not stated in the written Order Confirmation or in these International Terms and Conditions.
- (3) There are no side agreements to the Contract and these International Terms and Conditions.
- (4) Any amendments to a concluded Contract require our written confirmation, duly approved by signature.
- (5) The customer is not entitled to assign his rights and obligations against us to a third party.
- (6) The place of performance for delivery of the goods or services respectively is governed in § 6 (2), the place of performance for the payment in § 9 (1) of these International Terms and Conditions. For all remaining obligations and irrespective of the agreement of a differing Incoterms®-clause, the place of performance is agreed to be Rossendorfer Ring 42, 01328 Dresden/Germany, including for a replacement delivery, for the rectification of non-conformities and for the restitution of the contractual obligations in case of avoidance of the Contract.
- (7) All communications, declarations, notices etc. (hereinafter collectively "Notices") are to be drawn up exclusively in German or English. Notices by means of fax or email fulfil the requirement of being in writing. A signature is not required, unless these International Terms and Conditions explicitly require a signature.

#### **§ 17 Intellectual property rights**

- (1) "Intellectual Property" shall mean any inventions, technological innovations, discoveries, designs, formulas, know-how, processes, business methods, patents, trademarks, service marks, copyrights, ideas, creations, writings, illustrations, photographs, improvements to all such property, and all recorded material defining, describing, or illustrating all such property, whether in hard copy or electronic form.
- (2) The Contract does not grant and shall not be construed as implying that either party to the Con-

tract shall have the right to use Background Intellectual Property of the other party except as necessary under the principle of exhaustion (also known as exhaustion doctrine; *Erschöpfungsgrundsatz*). "Background Intellectual Property" means Intellectual Property of either party developed before or independent of the Contract.

- (3) The Contract does not grant and shall not be construed as implying that either party hereto shall have the right to use Foreground Intellectual Property of the other party. "Foreground Intellectual Property" means Intellectual Property of either party developed in the course and during the term of the Contract but which does not constitute "Joint Foreground Intellectual Property".
- (4) "Joint Foreground Intellectual Property" means Foreground Intellectual Property that has been developed jointly by the parties during the term of the Contract in connection with the goods or services to be delivered under a Contract, provided that (i) prior to jointly developing Foreground Intellectual Property, the parties have mutually agreed in writing, to be signed by the representatives of each party, that Foreground Intellectual Property shall be jointly developed, and cumulatively (ii) both parties have materially contributed to the development of Joint Foreground Intellectual Property. The mere fact that the parties discuss the characteristics of goods or services does not constitute a material contribution. Likewise, the mere fact that one party provides financial assistance or pays for the performances of the other party's contractual obligations or conducts test to verify if specifications are met does not constitute a material contribution.

#### **§ 18 Agreement on arbitration and jurisdiction**

- (1) If the customer's place of business is located within the European Union, Switzerland, Iceland or Norway, for all contractual and extra-contractual disputes, including disputes under insolvency law, arising out of or in connection with a Contract and/or these International Terms and Conditions, including its validity, invalidity, violation or cancellation as well as other disputes arising out of the business relationship between the customer and us, the state court which has jurisdiction for 01328 Dresden/Germany shall have exclusive jurisdiction. Instead of bringing an action before the state court which has jurisdiction for 01328 Dresden/Germany, we are also entitled to bring an action before the state court of the customer's place of business.
- (2) If the customer's place of business is outside of the European Union, Switzerland, Iceland and

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Norway, all contractual and extra-contractual disputes, including disputes under insolvency law, arising out of or in connection with a Contract and/or these International Terms and Conditions, including its validity, invalidity, violation or cancellation as well as other disputes arising out of the business relationship between the customer and us shall be finally settled in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution in force on the date on which the Notice of Arbitration is submitted in accordance with these Rules. The place of the arbitration shall be Zurich/Switzerland, the language used in the arbitral proceedings shall be English.

**§ 19 Severability**

If provisions of these International Terms and Conditions should be or become partly or wholly ineffective, the remaining provisions will continue to apply. We and the customer are bound to replace the ineffective provision with a legally valid provision as close as possible to the commercial meaning and purpose of the ineffective provision.

Dresden, 01. January 2023