

# Standard Terms and Conditions of Amitech Germany GmbH

## § 1 General

(1) Deliveries shall be subject exclusively to the following terms and conditions unless Amitech confirms other terms and conditions expressly in writing. Deviating terms and conditions from the customer that we do not explicitly accept in writing shall not be binding on us. Our Standard Terms and Conditions shall also apply if we deliver to the customer in the knowledge of the customer's terms and conditions that are inconsistent or in deviation from our own.

(2) All agreements concluded between us and the customer for the purpose of implementing the contract are contained in writing in this contract.

(3) These terms and conditions shall also apply to subsequent deliveries without the requirement of a new agreement.

## § 2 Offer, offer documents

(1) If an order is to be regarded as an offer as defined in §145 of the German Civil Code (BGB) we may accept this within two weeks. Our offers are without obligation.

(2) Sketches, drafts, samples and similar preliminary work that the customer instigates shall be billed even if a delivery order is not issued.

(3) If standard products that were the subject of a firm order and were confirmed by us are not accepted we reserve the right to bill 20% of the order value as compensation for the costs without verification. The parties may provide evidence of lower damages.

(4) We reserve title to and copyright in illustrations, drawings, calculations and other documentation. The customer must obtain our express written consent before passing them to third parties.

(5) Amitech shall act solely as a supplier. Static and other calculations shall be carried out to the best of our knowledge and on the basis of data supplied by the customer. Our calculations are without obligation. They are made without the assumption of a legal obligation and are issued to the exclusion of our liability. The buyer shall not be exempt from examining the suitability for the intended purpose of the goods ordered and of the suggested design. Amitech shall also not be obliged to check whether the data supplied by the buyer are in conformity with the actual circumstances, in particular the ground and installation conditions. The buyer shall remain solely responsible for checking our static and other calculations and the installation and load of our products.

Other information on processing and application possibilities for our products, technical advice and other data are also provided to the best of our knowledge and to the exclusion of all liability. This shall not affect our liability under tort.

## § 3 Prices and terms of payment

(1) Unless otherwise agreed prices are understood ex works stores, excluding packaging, freight, postage, insurance and other shipping costs; these will be billed separately. Prices shall be billed in accordance with our price lists. If there is a deviation from the delivery lengths (short tubes) for production reasons, this shall in no case lead to an entitlement to price reductions.

(2) A payment on account may be billed for self-contained service parts and for specially made components in the amount of the value of the service provided, insofar as title to this passes to the customer.

(3) Our prices do not include value-added tax. This will be shown separately in the amount currently valid on the date of invoicing.

(4) The invoice amount shall be due for payment net within 30 days of delivery. We grant discounts following written agreement but only if there are no arrears of payments. If bills are accepted in an exceptional case the costs of discounting and collection shall be for the buyer's account.

(5) We reserve the right to alter our prices accordingly if price reductions or price increases occur after conclusion of the contract, in particular following collective wage agreements or changes to material prices. We shall inform the buyer of these on demand.

(6) The buyer shall only be entitled to set off if his counterclaims are final and absolute, not in dispute and if we have accepted them. In addition, he shall only be entitled to exercise his right of retention insofar as the counterclaim is based on the same contractual relationship.

## § 4 Default of payment

(1) If fulfilment of the claim to payment is endangered because of an impairment to the customer's financial position that occurred or became known after conclusion of the contract, the contractor may demand advance payment and payment of all outstanding invoices, including those that are not yet due, retain goods that have not yet been delivered and discontinue further work on current orders. The contractor shall also be entitled to these rights if the customer does not make any payments in spite of a reminder following a default.

(2) In case of default of payment default interest of 8% above the respective base rate of the German Bundesbank shall be paid. This does not exclude claims for additional damage or loss as a result of the default.

## § 5 Delivery

(1) An agreed delivery period shall commence on the date the contract is concluded.

(2) Compliance with our obligation to deliver presupposes that the customer has fulfilled his obligations duly in good time. The defence of an unfulfilled contract is reserved.

(3) If the customer is in default of acceptance or infringes other obligations to cooperate we shall be entitled to demand compensation for loss or damage we have suffered as a result, including any extra costs. We reserve the right to make further claims.

(4) The contractor shall be entitled to a right of retention in accordance with § 369 of the German Commercial Code (HGB) with regard to materials and other items delivered by the customer until full payment of all claims under the business relationship.

(5) Amitech shall be liable under statutory provisions insofar as the underlying contract is a firm deal as defined by §286(2) Indent 4 of the German Civil Code (BGB) or § 376 of the German Commercial Code (HGB). It shall be liable under statutory provisions insofar as the customer is entitled to claim as a result of a delivery default for which we are responsible that his interest in a further fulfilment of the contract has ceased.

(6) Amitech shall also be liable under statutory provisions insofar as the delivery default is the result of an intentional or grossly negligent breach of contract for which it is responsible; the fault of its representatives or vicarious agents shall be attributed to us. If the delivery default is not the result of an intentional breach of contract for which it is responsible, our liability for damages shall be limited to the foreseeable typical damage.

(7) Amitech shall be liable under statutory provisions insofar as the delivery default for which it is responsible is the result of a culpable breach of a material contractual obligation; in this case the liability for damages shall be limited to the foreseeable typical damage.

(8) If Amitech is prevented from fulfilling its obligation through the occurrence of unforeseeable extraordinary circumstances, which it was unable to avert in spite of reasonable care in the circumstances, in particular strike, lockout, unforeseeable breakdowns and unavoidable shortages of raw materials, traffic breakdowns, interventions by governments or their authorities, if the delivery is not impossible the period for delivery shall be extended by a reasonable extent. If these circumstances make the delivery impossible, Amitech shall be exempted from its obligation to deliver without the buyer having a claim for damages or being entitled to the right to withdraw from the contract. Where prepaid deliveries are agreed this shall apply as soon as the unloading point is accessible on a road fit for traffic. If the transport situation, or the berthing situation in case of delivery by sea, does not permit perfect speedy bringing of the materials, the supplier shall be entitled to make these available at another point taking the most suitable account of the customer's interests.

(9) Amitech shall otherwise be liable in case of delivery default for each complete week of default in the framework of flat-rate compensation for default in the amount of 3% of the delivery value but no more than 10% of the delivery value. The parties reserve the right to show proof of other damage or loss.

(10) We shall not be liable for the correctness of the amounts shown in bills of quantities or for the service calculations of our technicians. In case of volume sales fluctuations of up to 12% upwards or downwards are permissible.

## § 6 Quality conditions, technical information

(1) Our products are offered and sold as goods of merchantable quality. Specimens and samples are deemed to be average samples. Deviations in colour, weight and dimensions and from the standard tolerances are reserved. Inspected goods, in particular from stacks, are deemed to be sold as seen.

Warranties of qualities shall apply only if they are confirmed separately in writing in the contract. Insofar as standards are referred to they are intended merely to describe the goods and not as warranties of qualities. We reserve the right to inspect our products in the buyer's store or construction site during working hours, including for the employees of monitoring institutes in the framework of existing monitoring contracts for official quality monitoring in accordance with the appropriate DIN or other provisions.

(2) The contractor is informed that he must observe the technical information and laying instructions from Amitech and that non-compliance can impair the service life and reliability of the components, without this leading to guarantee claims against the contractor.

## § 7 Reservation of title

(1) We reserve title to the goods until receipt of all payments under the delivery contract. We shall be entitled to check the contractual storage of the goods during the usual hours of business. In case of behaviour by the buyer in breach of the contract we shall be entitled to take the goods back. The buyer hereby declares his agreement that the persons we authorise to collect may for this purpose enter and drive on the premises on which the goods are located. If we take goods back this shall mean a withdrawal from the contract. After taking the object of sale back we shall be entitled to sell it; the proceeds of the sale shall be set off against the buyer's liabilities, less reasonable selling costs.

(2) The buyer agrees to keep reserved goods separate from the goods of other suppliers and manufacturers so that it is possible at all times to attribute title to us, and to handle the goods with care; he agrees in particular to insure them adequately at his own cost at the original value against damage by fire, water and theft.

(3) The buyer shall inform us without delay of attachments or other impingements by third parties so that we can institute proceedings in accordance with §771 of the German Civil Procedure Rules (ZPO). If third parties are unable to reimburse the judicial and extrajudicial costs of an action in accordance with § 771 of the German Civil Procedure Rules (ZPO) the buyer shall be liable for the shortfall.

(4) The buyer is entitled to resell the goods in the course of normal business. However, he shall not have the right to pledge the object of the sale or assign it as security. He hereby assigns all claims to which he is entitled under the resale against his buyers or third parties in the amount of the final invoice amount, including VAT, of our claims; this applies regardless of whether the goods were resold without or after processing. This shall apply to current account balances from the business relationship with his buyers.

(5) The buyer remains authorised to collect this debt even after assignment. This shall not affect our authority to collect the debt ourselves. However, we agree not to collect the debt as long as the buyer complies with his obligations to pay from the proceeds collected, does not default and in particular there is no petition for the institution of composition or bankruptcy proceedings and payments have not been discontinued. If this is the case, however, we may demand that the buyer notifies us of the assigned claims and their debtors, provides us with all information required for collecting, hands over the appropriate documents and informs the debtors (third parties) of the assignment.

(6) Processing and reshaping the object shall always be on our behalf as the owners. In case of processing by the buyer with objects that do not belong to us we shall acquire co-ownership of the new object in the ratio of the invoice value (final invoiced amount including value-added tax) to the acquisition value of the goods that were processed as well. The provisions governing goods delivered under reservation of title shall apply analogously to an object created by processing.

(7) If the object is mixed inseparably with other objects that do not belong to us we shall acquire co-ownership of the new object in the ratio of the value of the object bought (final invoiced amount including value-added tax) to the other mixed objects at the time of mixing. If the mixing is carried out in such a way that the buyer's object is to be regarded as the main object, it is deemed to be agreed that the buyer assigns co-ownership to us pro rata. The buyer shall hold the sole title or co-ownership created in this way on our behalf.

(8) The buyer also assigns to us claims to secure our claims against him that accrue to him against third parties through the connection of the object bought with land.

(9) We agree on demand by the buyer to release the securities to which we are entitled insofar as the realisable value of our securities exceeds the claims that are to be secured by more than 20%. We may choose the securities to be released.

## § 8 Complaints

(1) Deliveries shall take place in principle ex works store. The customer shall check in each case that the goods are in accordance with the contract. Failing this, the risk of accidental loss or accidental deterioration of the object shall pass to the customer at the moment in which the latter is in default of acceptance or of payment.

(2) Complaints are only permissible within one week after receipt of the goods. Hidden defects that cannot be detected after an immediate inspection may only be claimed against the supplier if the notice of complaint is received by the customer within 12 months of the goods leaving the supply works.

(3) In case of justified complaints Amitech shall have the option, to the exclusion of all other claims, of reworking or supplying a replacement, namely to the amount of the order value, unless there is a lack of a warranted quality or Amitech or its vicarious agents are guilty of intention or gross negligence. This shall also apply in case of a justified complaint regarding the reworking or replacement delivery. However, in case of delayed, omitted or unsuccessful reworking or replacement deliveries the customer may withdraw from the contract. This shall not affect §361 of the German Civil Code (BGB). Liability for consequential damage is excluded unless the supplier or his vicarious agents are guilty of intention or gross negligence.

(4) Defects of part of the delivered goods shall not give rise to a right to reject the whole delivery unless the partial delivery is not of interest for the customer.

(5) The supplier shall only be liable for deviations in the quality of the material used up to the amount of his own claims against the respective sub-supplier. In cases of this nature the supplier shall be released from liability if he assigns his claims against the sub-supplier to the contractor. The supplier shall be liable as a guarantor insofar as claims against the sub-supplier do not exist through the fault of the supplier or if such claims cannot be enforced.

## § 9 Limitation of own claims

Our claims to payment of the purchase price and/or the compensation for work shall lapse in five years, in deviation from §195 of the German Civil Code (BGB). §199 of the German Civil Code (BGB) shall apply with regard to the commencement of the period of limitation.

## § 10 Legal venue, place of performance

(1) The legal venue is Leipzig. However, we shall also be entitled to sue the contractor in the courts at his place of abode or at the location of the company's registered office.

(2) Unless otherwise shown in the confirmation of the order the location of our registered office shall be the place of performance.

## § 11 Concluding provisions

(1) If these provisions are partially invalid or contain loopholes this shall not affect the validity of the remaining provisions.

(2) In case of the invalidity of individual clauses or of the existence of loopholes in the contract the parties agree to conclude a supplementary agreement that most closely approaches the meaning of what was intended.