

General Terms and Conditions of Supply (International)

I. General

1. All of our supplies and services are based on the present General Terms and Conditions of Supply. Any different purchasing terms and conditions of the customer are not accepted by us; we shall contradict any such declarations right at the outset. No contract shall become effective unless the purchase order has been confirmed by us in writing.
2. Initial quotations are provided free of charge. Further quotations and design work will be provided free of charge only if a legally effective supply contract comes into existence and remains in force. Unless a specific validity period is stated, our quotations shall be without any obligation on our part.
3. The documents belonging to the quotation, such as illustrations, drawings, and specified weights and dimensions, are only approximately relevant unless they have been expressly declared binding.
4. We reserve any and all rights, in particular the right of ownership and copyright, in designs, cost estimates, drawings and all other information of physical and non-physical substance, including other commercial and technical documents of whatever nature. These shall not be disclosed to third parties and in case of non-acceptance of our quotation or, respectively, if so requested by us, they shall be immediately returned to us or destroyed, at our discretion, including all copies; if destroyed, this shall be communicated to us in writing.
5. The customer shall be responsible for compliance with the regulations applicable at the place of use, in particular as far as environmental protection and accident protection are concerned. Where such regulations result in requirements concerning the content of our supplies and services, the customer shall immediately inform us thereof and of the content of the mandatory modifications. The price quoted does not include the expenses resulting from the implementation of such regulations.

II. Price and payment

1. Our prices are net prices for delivery EXW (according to the INCOTERMS version applicable at the time). For deliveries into another EU country, we require the turnover-tax registration number of the customer as well as a certificate evidencing the transport of the delivered goods into another EU country. Where no such information is available, the statutory amount of the German Value Added Tax will be added to the prices. Our prices are based on the cost factors as applicable at the date of the quotation. We reserve the right to revise our prices in case these should change by the time the goods are ready for shipment.
2. Payments shall be effected without any deduction to the account stated in our quotation. Payment shall be effected in the following instalments:
 - 1/3 downpayment upon order placement
 - 1/3 upon expiry of half the delivery period
 - 1/3 upon readiness for shipment
3. The customer shall be entitled to withhold payments or to set off payments against claims only insofar as his claims are undisputed or have been found to be legally effective.
4. Subject to any other provision contained in the present General Terms and Conditions of Supply or in the Contract, all taxes, duties and other fees incurred outside the Federal Republic of Germany shall be to the customer's account.

III. Intercompany clearing clause

1. We shall be entitled to set off customer claims against any and all claims already existing or arisen by the time of settling accounts, to which we or Siemag Weiss GmbH & Co. KG or a company in which the latter holds a direct or indirect share of at least 50% ("**Siemag**") are entitled, irrespective of their maturity. Moreover, we shall be entitled to set off customer claims vis-à-vis Siemag against any and all already existing claims and claims arisen by the time of settling accounts, to which we or Siemag are entitled, irrespective of their maturity. Information about the group of companies concerned will be submitted to the customer on request at any time.
2. All securities furnished to us shall also serve as security for claims which Siemag Weiss GmbH & Co. KG and/or a company in which the latter hold a direct or indirect share of at least 50% may have against the customer. Vice versa, all securities which the customer has furnished to Siemag Weiss GmbH & Co. KG and/or the said group companies, shall also serve as security for our claims, irrespective of the legal grounds on which these may have arisen.

IV. Delivery time

1. Adherence to the delivery time is subject to all supplies having been received by us correctly and in a timely manner and in addition requires that all commercial and technical matters have been clarified between the parties to the contract and that the customer has fulfilled all his obligations such as the provision of the necessary certificates and approvals from authorities or effecting of a downpayment. If this is not the case, the delivery period shall be extended accordingly.

Where an acceptance is required, the acceptance date shall be the applicable date – except in case of a justified refusal of acceptance – alternatively, the notification of readiness for acceptance may be used.

If the despatch or acceptance of the goods to be delivered is delayed for reasons attributable to the customer, he will be charged the expenses incurred on account of such delay, starting one month after the notification of readiness for despatch or readiness for acceptance, respectively.
2. All cases of Force Majeure as well as unforeseen occurrences which are beyond our control, such as acts or omissions by government institutions or authorities, labour dispute actions (such as strike and lockout), operational disturbances, scrapping, delays in the receipt of raw and construction materials at our end or at our subcontractors, etc., shall adequately extend the delivery time provided that such occurrences affect the timely fulfilment of the contract as a whole or in part. We shall not be responsible for such occurrences either if they arise during a delay. We shall inform the customer about the start and end of such occurrences if this is possible.
3. In case our supplies or services are delayed and a damage arising therefrom causes a loss to the customer, he shall be entitled, with all further rights and claims excluded, to demand liquidated damages for delay. After the expiry of a grace period of two weeks, this shall amount for each further full week of delay to 0.5 % – with a maximum of 5 % – of the value of the delayed deliveries or services. The liquidated damages for late delivery finally settle the consequences of a possible delay, subject to the provisions of section IX and in case of unlawful intent or gross negligence. The claim for liquidated damages for late delivery which may become payable by us shall be filed within [10] days after the notice of readiness for shipment and may be set off against the payment due on readiness for shipment (see Section II. 2. above). In case of non-compliance with this deadline, the claim for liquidated damages for late delivery shall become void.

DUMA-BANDZINK GmbH**V. Transfer of risk, acceptance**

The risk is transferred on delivery EXW (according to the latest version of INCOTERMS). Where acceptance is required, this shall determine the transfer of risk (with the exception of risk of transport). The acceptance shall be performed without delay at the acceptance date or, alternatively, upon notification of the readiness for acceptance. If acceptance is delayed for reasons not attributable to us, the risk shall pass to the customer on the day of notification of readiness for acceptance.

VI. Retention of ownership

1. The ownership of the delivered goods shall pass to the customer only after receipt of all payments from business transactions with the customer. If for the retention of ownership to become effective, the adherence to formal requirements or other conditions should be necessary, the customer shall inform us thereof and arrange all that is necessary for the legally effective granting of this security and cooperate in this process. Where a retention of ownership is not legally possible, the customer shall inform us thereof and arrange for a similar security to be granted to us.
2. The customer shall be obliged to insure the full value of the goods supplied, starting from the transfer of risk and until the transfer of ownership, against any adverse effects such as theft, damage by breakage, fire, water and other circumstances, etc., and to furnish a relevant proof (insurance policy or the like) upon our first request.
3. The customer shall not sell, pledge nor assign as security the goods supplied before the transfer of ownership. In case of seizure, confiscation, other injunctions or claims by third parties he shall inform us without delay. He shall immediately take all actions that are needed to suspend and defend such access or claims and furthermore assist us in every way in exercising our rights.
4. The application for instituting insolvency proceedings concerning the customer's property shall entitle us to withdraw from the contract and demand the return of the goods supplied, provided that this is legally allowed.

VII. Use of software

1. Where the scope of supply includes software, the customer will be granted the non-exclusive, non-transferable and non-sublicensable right of using the software supplied, including its documentation, for the contractually agreed purpose on the goods supplied therefor. Any use of the software for other purposes and/or on more than one system shall be prohibited.
2. The customer shall duplicate, edit, translate or convert the software from the object code to the source code only to the legally allowed extent. The customer undertakes not to remove nor to change without our prior written approval any manufacturer information, especially no copyright notes.
3. All other rights in the software and documentations, including duplicates, shall remain with us or with the software supplier.

VIII. Warranty

We shall be liable for defects in the goods supplied, including the lack of warranted quality, with the exclusion of further claims and rights, as follows:

Material defects

1. The warranty period for all supplies shall end after 12 months (for multi-shift operation 6 months) from delivery, but at the latest 18 months, after readiness for shipment, whichever comes earlier. If the supplied goods is proved to be defective due to circumstances that have arisen prior to installation or readiness for shipment, if the customer has fulfilled his duty of inspection and objection, the supplied goods shall, at our discretion, be repaired or replaced. Under the proviso of unlawful intent or gross negligence, all further warranty claims, also in the case of warranted quality, especially rescission, reduction and damages, shall be excluded.
2. If the customer should refuse to grant us the time and opportunity to make all repairs and replacement deliveries as deemed necessary by us, we shall be exempt from our warranty obligations. Only if the operational safety is directly in jeopardy, of which we shall be informed without delay, or if we are in default with the elimination of a defect due to unlawful intent or gross negligence, shall the customer have the right, after contacting us, to repair the defect himself or have it repaired by third parties and to demand from us the reimbursement of adequate costs.
3. The direct costs incurred for the repair or replacement supply shall be borne by us if the notice of defect should turn out to be justified. For the elimination of defects, any existing lifting equipment, etc., shall be made available by the customer free of charge. Under the proviso of unlawful intent or gross negligence, a repair or replacement supply made by us shall not start again the warranty period.
4. With the exception of unlawful intent or gross negligence, any liability for delay in connection with the repair or replacement supply shall be excluded.
5. We shall be entitled to refuse the elimination of defects insofar as the customer does not fulfil his obligations.
6. In particular, no warranty will be assumed for defects which are due to, for example, unsuitable or improper use, faulty installation, commissioning, operation or maintenance by the customer or third parties, incorrect or incomplete information by the customer, natural wear and tear, faulty or negligible treatment (including, among others, excessive stressing), use of unsuitable operating materials, poor quality of construction work, unsuitable subsoil, chemical, electrochemical or electrical influences, unless we are responsible for these items.
7. Should the customer or a third party effect an improper repair, we shall not be responsible for the resulting consequences. The same shall apply to modifications to the supplied goods which are made without our prior written approval.

Violation of intellectual property rights

8. Should the contractual use of the supplied goods lead to the violation of intellectual property rights of third parties in the contractually agreed country of use, we shall, at our expense, generally obtain for the customer the right of further use or modify the supplied goods in a manner reasonable to the customer such that the violation of intellectual property rights ceases to exist.
If this should be impossible at financially adequate terms and conditions or within an adequate period of time, the customer is entitled to rescind from the contract. Under the conditions stated above we as well shall be entitled to rescind from the contract, with any damages excluded, except in case of unlawful intent or gross negligence on our part.
Moreover, we shall keep the customer harmless from and against any undisputed claims or legally effective claims of the respective owner of the intellectual property rights.
9. Except in case of unlawful intent or gross negligence, our obligations as stated in Section VIII.8 in the event of a violation of intellectual property rights shall be final. They shall exist only if

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- the customer informs us without delay of the intellectual property rights violation claimed and in particular such that all protective actions including out-of-court settlements are left to our discretion,
- the customer declares any acceptance or makes any arrangements, in particular compositions, concerning the claimed intellectual property rights violation or, respectively, any supposed resulting claims only with our written approval,
- the customer assists us in an adequate manner in the defence of the claims raised and rights or, respectively, makes it possible for us to undertake the modifications as mentioned in Section VIII.8,
- the intellectual property rights violation is not based on an instruction by the customer, and
- the intellectual property rights violation has not been caused by the customer having modified the supplied goods without authorization or used it in a manner that does not conform to the contract.

Software defects

10. Sections VIII.1 to VIII.7 apply accordingly to software defects under the proviso that we will be liable only for reproducible defects and the liability, except in cases of unlawful intent or gross negligence, on our part is completely excluded. If the use of the software leads to a violation of intellectual property rights of third parties, Sections VIII.8 and VIII.9 shall apply.

IX. Waiver of outstanding deliveries in case of delay

1. If a delay as defined in Section IV.3 has occurred and if the customer, after expiry of the time for which liquidated damages for delay are payable according to Section IV.3, grants us an additional reasonable period to deliver the goods with the explicit declaration that he will refuse to accept the outstanding deliveries after such time has expired, and if the additional period is not adhered to due to our fault, the customer shall be entitled to waive the outstanding deliveries and, as the case may be, claim back any downpayments already made for such outstanding deliveries.
2. In addition to the claim for liquidated damages for delay according to Section IV.3 and the right of waiving outstanding deliveries and, as the case may be, claiming back any downpayments already made for such outstanding deliveries, all further rights and claims of the customer for delay, especially for redhibition, cancellation, reduction or damages, except in case of unlawful intent or gross negligence on our part, shall be excluded. Thus, in particular the customer's right of rescission concerning deliveries already made shall be excluded.
3. In case of unforeseen events as defined by Section IV.2 or in case of Force Majeure, we may rescind from the contract either in full or in part, provided that they substantially change the financial importance or the content of the service or significantly affect our operations. No claims for damages by the customer for such a rescission shall apply, except in case of unlawful intent or gross negligence on our part.

X. Liability

1. If, on account of any omitted or erroneous implementation of proposals or consultations provided before or after conclusion of the contract, or any violation of other contractual incidental obligations, especially those concerning instructions for the operation and maintenance of the supplied goods, we are at fault for the supplied goods being unable for use by the customer for the contractual purposes, the provisions of Section VIII. shall apply accordingly, with all further customer rights and claims excluded.
2. Except in case of unlawful intent or gross negligence on our part, our overall aggregate liability for whatever legal grounds, especially also for claims for defects under warranted quality, damages, etc., shall be limited to 15% of the respective net contract price. The customer's rights and claims as detailed in the present General Terms and Conditions of Supply and in the respective contract shall be final; any further customer rights and claims shall be excluded.
3. We shall be liable for damage not arising on the supplied goods itself, regardless of the legal grounds, only in case of unlawful intent or gross negligence on our part.

XI. Assertion of contractual claims

Unless otherwise stipulated above, all customer claims resulting from or in connection with the respective contract, including claims for any repairs or replacement deliveries, shall, for whatever legal grounds, expire at the latest 12 months after delivery or acceptance, if such acceptance has been agreed on or in case of impossibility caused by us at the latest 12 months after conclusion of the contract unless asserted by the customer in writing, stating the amount and legal ground of the asserted claim.

XII. Applicable law, arbitration

1. Unless otherwise agreed on in the contract, substantive Swiss law shall apply, with the UN Convention on the International Sale of Goods (CISG) dated 11 April 1980) excluded.
2. Any and all disputes arising out of or in conjunction with the respective contract, including especially those that concern the effectiveness of the contract, the inclusion of the present General Terms and Conditions of Supply or the present arbitration clause, etc., shall be finally settled with binding effect according to the Rules of Arbitration of the International Chamber of Commerce (ICC Paris), without recourse to the general courts of law, by one or more arbitrators appointed according to such rules. The venue of the court of arbitration shall be Zurich, Switzerland. The language of the proceedings shall be in English.