



## General Terms and Conditions

for products and services provided by  
SIKA Dr. Siebert & Kühn GmbH & Co. KG,  
SIKA Systemtechnik GmbH, SIKA Aquatec GmbH  
for use in business transactions with respect to other companies

### 1.0 General Provisions

1.1 For the scope of supply of goods or services (hereinafter referred to as "deliveries, goods") the written declarations from both Parties shall be authoritative. The Buyer's General Terms and Conditions shall only, however, apply to the extent to which the supplier or service provider (hereinafter referred to as "Supplier") has given his expressed written consent. These General Terms and Conditions shall come into effect no later than the time of receipt of the consignments.

1.2 In respect of cost estimates, drawings and other documents (hereinafter referred to as "documents"), the Supplier reserves unlimited rights of exploitation under the terms of proprietary and copyright laws. The documents may only be made accessible to third parties with the prior expressed consent of the Supplier and are to be returned to the latter on demand without delay should the contract not be awarded to him. Sentences one and two apply mutatis mutandis to documents belonging to the Buyer; these may, however, be made accessible to third parties to whom the Supplier has assigned consignments in a permissible manner.

1.3 The Buyer has the non-exclusive right of use of standard software and firmware with the agreed performance features in unchanged form on the agreed equipment. The Buyer may create a backup copy without explicit agreement.

1.4 The Supplier has the right to make part-deliveries if the part-delivery can be used by the Buyer in the framework of the contractually agreed intended use, the supply of the remaining ordered goods is guaranteed and the Buyer does not thereby become subject to significant extra or additional costs.

1.5 Insofar as a take-back obligation on the part of the manufacturer exists in respect of electrical and electronic devices pursuant to section 10 para. 2 Electrical and Electronic Equipment Act (Elektronikgerätegesetz - ElektroG), this obligation shall be fulfilled by the return (freight collect) to the Supplier by the Buyer of any used devices and subsequent recycling by the latter. In cases where the supplied electrical and electronic devices are sold on by the Buyer, the latter is likewise under obligation to arrange for the freight collect return of the devices to the Supplier for recycling.

## **2.0 Prices and Conditions of Payment**

- 2.1 The prices are quoted ex works, excluding packaging. This will be separately invoiced. Statutory value added tax is not included in the quoted prices. This will be shown separately on the invoice at the rate currently in force on the day the invoice was issued. If no other agreements are made at the time of order confirmation, the net purchase price (without deductions) is due for payment within 30 days of the date on the invoice. Statutory regulations shall apply in cases of late payment. The deduction of a discount requires special written consent.
- 2.2 Payments shall be made to the Supplier's account without any deductions and free of transaction charges.
- 2.3 The Buyer only gains the right to offset the invoice if his counter-claims are established by force of law, uncontested or recognised by the Supplier in writing. Furthermore, he is only entitled to exercise his right of retention inasmuch as his counter-claim is based on the same contractual relationship.
- 2.4 In case the Parties haven't made any other agreement, the goods will be loaded and shipped uninsured at the risk of the Buyer, either by GLS or by carrier.

## **3.0 Retention of Title**

- 3.1 The Supplier reserves the right to retention of title of the goods until such time as all payments resulting from the business relationship with the Buyer have been made. The goods supplied by the Supplier to the Buyer remain the property of the former until such time as the complete payment of all secured claims has been made. Both the goods and all other goods superseding them pursuant to this clause, which are also subject to retention of title are hereinafter referred to as "reserved goods".
- 3.2 The Buyer will keep the reserved goods safe free of charge for the Supplier.
- 3.3 The Buyer has the right to process and sell the reserved goods in the normal course of business as long as no enforced recovery event arises (see 3.7).
- 3.4 If the reserved goods are processed by the Buyer, it is agreed that the processing takes place in the name and on the account of the Supplier and the latter directly acquires the ownership or, in cases where the processing is carried out using materials from several different owners or the value of the processed item is higher than that of the reserved goods, co-ownership (fractional share) of the newly created item proportional to the ratio of the value of the reserved goods to that of the newly created item. In cases where no such acquisition of ownership on the part of the Supplier takes place, the Buyer henceforth transfers to the Supplier his future ownership or, proportionately as above, co-ownership of the newly created item as collateral.

- 3.5 In the case of resale of the reserved goods, the Buyer henceforth conveys to the Supplier by way of security the claim - or, in the case of co-ownership of the reserved goods with the Supplier, proportion thereof corresponding to the co-ownership share - which thereby arises against the purchaser. The same shall apply to other claims which supersede the reserved goods or arise in respect of them, such as, for example, insurance claims or claims arising from unlawful action in case of loss or destruction. The Supplier shall give the Buyer the revocable authorisation to collect claims conveyed to him on behalf of the Supplier in his own name. The Supplier is only entitled to revoke the collection authorisation in cases of enforced recovery.
- 3.6 The Supplier shall on demand release the reserved goods or any super-seding objects or claims of his own choice insofar as their value exceeds the amount of the secured claim by more than 25%.
- 3.7 Should the Buyer perform actions in breach of Contract, especially in relation to late payment, the Supplier shall have the right to recover the purchased goods (enforced recovery event). Recovery of the purchased goods by the Supplier shall amount to withdrawal from the Contract. The Supplier shall be authorised to dispose of the purchased goods once they have been recovered. Any proceeds from such disposal shall be offset against the Buyer's liability after the deduction of costs arising from disposal.

#### **4.0 Delivery Times; Late Delivery**

- 4.1 The observance of delivery deadlines presupposes the timely receipt from the Buyer of all documents, required approvals and clearances, with particular reference to plans, as well as the observance by the Buyer of agreed payment terms and conditions and other obligations. If these preconditions are not met in a timely manner, the delivery times shall be extended accordingly; this shall not apply if the Supplier is responsible for the delay. The observance of delivery schedules shall itself be subject to correct and timely delivery to the Supplier. The Supplier shall notify the Buyer of any impending delays as soon as possible.
- 4.2 The delivery deadline shall be deemed to have been observed if the object of the delivery has left the Supplier's premises or the Buyer has been notified of its readiness for dispatch prior to the expiry of the delivery period. If the goods are to be collected, the collection date, or, alternatively, the readiness for collection, shall be authoritative. This shall not apply in cases of justified refusal to collect.
- 4.3 If the dispatch or, as the case may be, the collection of the object of delivery is delayed for reasons attributable to the Buyer, any costs arising out of the delay shall be charged to him, starting one month after notification of dispatch or collection readiness. If dispatch or delivery is delayed on request of the Buyer by more than one month after notification of dispatch readiness, the Buyer can be charged for demurrage at a rate of 0.5% of the price of the object of delivery for each further month or part of a month, whereby this may not exceed a total of 5%. The Contract Parties are at liberty to confirm higher or lower demurrage costs.

4.4 The Supplier shall not be liable for impossibility of delivery or delays in de-livery insofar as these are brought about by Acts of God or other events unforeseen at the time of conclusion of the Contract (e.g. any kind of operational malfunction, problems with material or energy supply, transport delays, strikes, legal lockouts, shortages of staff, energy or raw materials, difficulties in the procurement of official approvals, official measures or non-supply, incorrect or delayed supply by the seller's own suppliers) for which the Supplier bears no responsibility. Insofar as such events make it significantly difficult or impossible for the Supplier to deliver the goods or perform the service and the impediment is not of a temporary nature, the Supplier shall be entitled to withdraw from the Contract. In the case of temporary impediments, the delivery and performance periods shall be extended or moved to avoid the period of impediment with the addition of an appropriate start-up period. If the delay should be such that the Buyer can no longer be reasonably expected to accept the goods or service in question, he is entitled forthwith to inform the Supplier in writing of his withdrawal from the Contract.

4.5 If the Supplier should fall behind schedule, and the Buyer is able to prove that a damage has arisen out of this delay, the latter shall be entitled to demand blanket compensation for the delay. This shall amount to 0.5% for every full week of the delay but may not exceed 5% of the value of that part of the total delivery which cannot as a result of the delay be used at the intended time or in line with the conditions of the Contract. Should the Buyer set an appropriate deadline for performance after the due date has passed - whilst taking into account the statutory exceptions - and this deadline is not observed, the Buyer shall then according to statutory regulations be entitled to withdraw from the Contract. He shall obligate himself, should the Supplier so demand to declare to the Supplier within an appropriate period of time whether he intends to make use of his right of withdrawal. Further claims arising out of delay in delivery are to be determined exclusively in line with paragraph 11 of these General Terms and Conditions.

4.6 The Buyer can withdraw from the Contract without notice if it becomes definitively impossible for the Supplier to perform the entire service before the passing of the risk. The Buyer can also withdraw from the Contract if it becomes impossible to deliver part of the order and he has a justified interest in rejecting a part-delivery. If this is not the case, the Buyer shall pay the contractually agreed price allotted to the part-delivery. The same shall apply in cases of incapacity on the part of the Supplier. In other cases, paragraph 10 shall apply. If the impossibility or incapacity should arise during the default of acceptance, or the Buyer is solely or overwhelmingly responsible for these circumstances, his obligation to perform in return shall remain in force.

## **5.0 Passing of Risk**

5.1 The risk shall pass to the Buyer when the consignments have been handed over for dispatch or collected. This shall apply to consignments excluding assembly and fitting and include carriage-free consignments. On request and at the expense of the Buyer, the Supplier shall insure the consignments against

normal transport risks. In the case of consignments involving assembly and fitting, the risk shall be passed on the day of handover on the premises of the Buyer or, if such has been agreed, after successful completion of a trial operating run.

5.2 Should the dispatch, delivery, start or execution of assembly and fitting, the operational handover or trial operating run be delayed for reasons attributable to the Buyer, or should the Buyer delay acceptance for other reasons, the risk shall then pass to the Buyer.

## **6.0 Acceptance**

The Buyer may not refuse to accept consignments due to insignificant defects.

## **7.0 Material Defects**

The Supplier shall be liable for any material defects to the exclusion of further claims subject to paragraph 10 as follows:

7.1 All parts or services which demonstrate a material defect within the limitation period, irrespective of operating time, are, at the discretion of the seller, to be remedied, re-supplied or re-performed. This shall apply insofar as the cause of such defects was already present at the time of passing of the risk.

7.2 The Buyer must provide the Supplier with notification of material defects without delay and in writing.

7.3 In order to allow the Supplier to undertake all remedial actions and spare parts deliveries which appear necessary, the Buyer must, subject to agreement with the Supplier, state the required time and occasion for the above; otherwise the Supplier shall be exempted from liability for any consequences that may arise therefrom. The Buyer shall have the right to remedy the defect himself, to contract third parties to remedy the defect and to demand recompense from the Supplier for the necessary costs which arise thereby only in urgent cases of risk to operational safety or where it becomes necessary to undertake immediate action to forestall unacceptably high levels of damage. Should the remedial action taken by the Buyer or third party prove to be improper, the Supplier shall bear no liability for the consequences arising therefrom. The same shall apply to changes undertaken to the object of delivery without the prior agreement of the Supplier.

7.4 Any direct costs arising from the remedy of defects or supply of replacement parts - in this case the cost of the replacement part plus delivery - shall be borne by the Supplier insofar as the claim proves to be justified. The latter shall also bear the costs for disassembly and refitting along with the costs arising out of the need to employ fitters and other ancillary staff, including travel costs, insofar as this does not place an unacceptable financial burden on the Supplier.

7.5 The Buyer shall have the right in accordance with statutory regulations to withdraw from the Contract if the Supplier - taking into account statutory exceptions - should fail to observe an appropriate deadline set for him to remedy a defect or to provide replacement parts needed due to a material defect, or if any remedial action should definitively fail. If the defect is not significant, the Buyer shall merely have the right to reduce the contract price. Further claims shall be determined solely according to paragraph 10 of these Terms and Conditions.

7.6 Claims in respect of defects shall not arise if the condition of the object of delivery only deviates to a minor extent from that agreed, if the usability of the object is not materially affected, or in the case of natural wear and tear or damages which arise after the passing of the risk due to improper or negligent handling, overloading, use in unsuitable production facilities, or external influences not foreseen in the Contract, as well as non-reproducible software errors. If the Buyer or third parties should make improper changes or undertake improper repair work, claims in respect of defects arising from these may likewise not be admitted.

7.7 In cases of notification of defects the Buyer shall have the right to withhold payments commensurate with the material defect or defects which have arisen. The Buyer may only withhold payments if a notice of defects can be asserted whose justifiability cannot be put in question. The Buyer shall have no right to withhold payments if the limitation term concerning his claims in respect of defects has expired. If a notification of defect has been wrongly given, the Supplier shall have the right to demand reimbursement from the Buyer for any costs which have thereby arisen.

7.8 Claims on the part of the Buyer in respect of necessary costs arising in the supplementary performance, in particular transport, travel, working and material costs, are excluded insofar as the costs have increased due to requirements on the part of the Buyer for the object to be subsequently delivered to a place other than the Buyer's premises; this shall not apply to cases where the relocation of the object is in accordance with its intended use.

7.9 Rights of recourse on the part of the Buyer in respect of the Supplier pursuant to section 478 German Civil Code (Bürgerliches Gesetzbuch - BGB) shall only apply insofar as the Buyer has made no agreements with his purchaser above and beyond the statutory rights to claim for damages for any defects. For the scope of the right of recourse of the Buyer against the Supplier pursuant to section 478 para. 2 BGB, no. 7.8 shall moreover apply *mutatis mutandis*.

7.10 For any further claims of compensation for damages, no. 10 (Other claims for compensation for damages) shall apply. Further claims on the part of the Buyer in respect of the Supplier or his vicarious agents on grounds of material defects, or such claims which are not regulated by this paragraph 7.0, are excluded.

7.11 Claims for supplementary performance shall become time-barred in 12 months from the start of the statutory limitation period. The same shall apply

mutatis mutandis to withdrawal and abatement. This period of limitation shall not apply insofar as the law pursuant to section 479 para. 1 BGB prescribes right of recourse and extended periods of limitation in cases of premeditation, fraudulent concealment of the defect and the failure to observe a guarantee of quality. The statutory regulations concerning suspension, suspension of expiry and recommencement of limitation remain unaffected.

7.12 If a defect occurs in one particular part of a delivered series (batch), the above warranty claims are available to the buyer only in respect of the parts which are actually defective. The same also applies to any claims for compensation for damages under subparagraph 10, insofar as this does not contravene compulsory legislation.

## **8.0 Commercial Trade Mark Rights and Copyrights, Defects of Title**

8.1 Insofar as nothing else is agreed, the Supplier is under obligation to carry out the delivery solely in the country of point of delivery, free of commercial trademark rights and copyrights of third parties (hereinafter referred to as "trademark rights"). Insofar as a third party asserts justified claims on the grounds of breach of trade mark rights against the Buyer in respect of deliveries made by the Supplier for contractually agreed purposes, the latter shall be liable to the Buyer within the period according to 7.11 as follows:

8.1.1 The Supplier shall at his own expense and discretion either obtain the right of use of the affected deliveries, modify them so as to ensure that trademark rights are not infringed, or exchange them for others which do not infringe such rights. Should this prove not to be within the bounds of reasonable possibility for the seller, the Buyer shall have the legal right to withdrawal or abatement. Furthermore, the Supplier shall exempt the Buyer from uncontested or legally binding claims asserted by the affected owner of the trademark rights.

8.1.2 The obligation of the Supplier to provide compensation for damages shall be determined according to paragraph 10.

8.1.3 The obligations on the part of the Supplier enumerated above shall only apply insofar as the Buyer has informed the Supplier in writing and without delay of any legally valid claims asserted by third parties and does not admit to an infringement, and the Supplier reserves all rights to actions in his defence and settlement negotiations. Should the Buyer discontinue use of the delivery for reasons of damage minimisation or for other good cause, he shall be under obligation to make it known to the third-party that the discontinuation of use does not amount to an acceptance of any infringement of trademark rights.

8.2 Claims on the part of the Buyer shall furthermore be excluded insofar as he bears responsibility for the infringement of trademark rights.

8.3 Claims on the part of the Buyer shall furthermore be excluded insofar as the infringement of trademark rights has been brought about by special requirements on the part of the Buyer or by any use not foreseeable by the Supplier or by the fact that the delivery has been modified by the Buyer or put into operation along with products not supplied by the Supplier.

8.4 In cases of infringement of trademark rights, the claims on the part of the Buyer regulated in paragraph 8.1.1 shall apply; otherwise the provisions of paragraphs 7.3, 7.7 and 7.9 shall apply mutatis mutandis.

8.5 Should other defects of title arise, the provisions of paragraph 7.1 to 7.11 shall apply mutatis mutandis.

8.6 Further claims on the part of the Buyer against the Supplier or his vicarious agents on grounds of defect of title, or such claims as are not regulated by this paragraph no. 8.0, are excluded.

## **9. Impossibility of Performance. Adaptation of Contract**

9.1 Insofar as the delivery proves impossible, the Buyer shall be entitled to demand compensation for damages, unless the Supplier is not responsible for the impossibility. However, the claim for damages on the part of the Buyer shall be limited to 10% of the value of that part of the delivery which cannot be put to the use for which it is intended because of the impossibility. This limitation shall not apply in cases of compulsory liability arising out of malicious intent, gross negligence, breach of major contractual obligations or in cases of compulsory liability on the grounds of injury to life, limb or health. The Buyer's right to withdraw from the Contract shall remain unaffected.

9.2 Insofar as unpredictable events as defined in paragraph 4.2 bring about significant changes to the economic importance or the content of the delivery, or have a significant effect on the Supplier's business, the contract shall be suitably adapted according to the principle of good faith. Should this prove not to be economically viable, the Supplier shall have the right to withdraw from the Contract. If he intends to make use of this right to withdraw all, it shall be incumbent upon him upon realisation of the momentousness of the event to communicate this to the Buyer without delay. This shall also apply to cases where an initial agreement was made with the Buyer to extend the delivery period.

## **10.0 Other Claims for Compensation for Damages. Disclaimer**

10.1 Claims for compensation for damages or costs on the part of the Buyer (hereinafter referred to as "claims for compensation for damages"), regardless of legal reason, especially those arising from the breach of contractual obligations and from unlawful actions, are excluded.



10.2 This shall not apply in cases of compulsory liability e.g. pursuant to the Product Liability Act (Produkthaftungsgesetz), in cases of malicious intent, gross negligence, due to injury to life, limb, or health, or to breaches of major contractual obligations, as well as in cases of fraudulently concealed defects and within the context of a guarantee assurance. The claim of compensation for damages for breach of major contractual obligations shall however be limited to foreseeable damages which are typical of this type of contract, insofar as there is no malicious intent or gross negligence, or no liability arising out of injury to life, limb or health. The regulations enumerated above do not amount to a shift in the burden of proof to the disadvantage of the Buyer.

10.3 Should the object of the delivery become unusable by the Buyer for the purpose intended under the Terms of the Contract as a result of careless or improper execution of suggestions or advice given before or after the conclusion of the Contract, or due to breaches of other contractual secondary obligations -- with particular reference to the operation and maintenance of the object of delivery -- then the provisions of this paragraph and paragraph 7.0 shall apply to the exclusion of further claims.

10.4 Insofar as the Buyer shall be entitled to claim compensation for damages pursuant to this paragraph 10.0, the period of limitation for such claims shall expire along with the expiry of the limitation period for claims for material defects pursuant to paragraph 7.11. In the case of claims for compensation for damages pursuant to the Product Liability Act, the statutory regulations concerning limitation periods shall apply.

## **11.0 Place of Jurisdiction and Applicable Law**

11.1 If the Buyer is a trader, the sole place of jurisdiction for all disputes directly or indirectly arising from the contractual relationship shall be the place of residence of the Supplier. The Supplier shall also however be entitled to bring legal action at the Buyer's place of business.

11.2 Legal relations existing in connection with this Contract shall be governed by German substantive law, to the exclusion of the United Nations Convention on contracts for the International Sale of Goods (CISG)

## **12.0 Legally Binding Nature of Contract**

The Contract shall remain binding with respect to its remaining parts even if individual points are legally ineffective. This shall not apply if adherence to the Contract would represent an unreasonable hardship for one or other of the Parties.