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SHL-Terms and Conditions for delivery of machines and components in dependence on the VDMA-standard

For use with respect to:

1. Any individual who, by concluding a contract, is acting in a business-related capacity or performing independent professional work (businessperson)
2. Any legal entity under public law or special fund under public law

I. General information

1. All goods delivered and services provided shall be based on these terms and conditions as well as any separate contractual agreements. If the buyer has deviating terms of purchase, they shall not become part of the contract even upon acceptance of an order. In the absence of a separate agreement, a contract shall be created through the supplier's written order confirmation.
2. The supplier retains the title and copyright to samples, price estimates, drawings and similar information in physical and non-physical (including electronic) form. Making them accessible to third parties is prohibited. The Supplier undertakes not to make information or documents deemed confidential by the buyer accessible to third parties except with the buyer's permission.

II. Prices and Payment

1. In the absence of a special agreement, prices are understood to be ex works, including loading at the factory but excluding packing and unloading. Prices do not include value added tax at the current rate.
2. In the absence of a special agreement, payment must be paid without any deductions to the Supplier's account in the following installments: one third as a down payment after receipt of the order confirmation, one third as soon as the buyer has been informed that the main items are ready for shipping, and the remaining amount within one month following transfer of risk.
3. The buyer shall be entitled to withhold payments only if its counterclaims are undisputed or have been legally established.
4. The buyer shall be entitled to offset payments against other transactions only if its counterclaims are undisputed or legally established.

III. Lead Time and Delays in Delivery

1. Lead times shall be specified in the agreements between the contracting parties. Compliance with deadlines for delivery requires that all commercial and technical issues between the parties have been resolved and that the buyer has fulfilled all its obligations, such as providing the requisite official

certificates or permits or making a down payment. If this is not the case, the lead time shall be extended by a reasonable period. This provision shall not apply if the supplier is at fault for the delay.

2. Compliance with the delivery deadlines is subject to correct and timely delivery by its suppliers. The supplier shall notify the buyer as soon as possible of any imminent delays.

3. The lead time shall be considered to be met when the item being delivered has left the supplier's facility before the deadline has expired or the buyer has been notified that the item is ready for shipping. If an acceptance test is to be conducted, then – except in cases of justified refusal of acceptance – the date of the acceptance test or, alternatively, notification of readiness for acceptance testing, shall be the determining factor.

4. If shipping or acceptance of the item to be delivered is delayed for reasons that are the fault of the buyer, then the buyer shall be billed for the expenses incurred through the delay, beginning one month after notification of readiness for shipping or acceptance testing.

5. If the failure to meet the delivery deadline is attributable to force majeure, labor disputes, or other events beyond the supplier's control, the delivery time shall be extended by a reasonable period. The supplier shall inform the buyer as soon as possible of the beginning and end of such circumstances.

6. The buyer may withdraw from the contract without giving notice if it becomes definitively impossible for the supplier to provide any of the goods or services prior to the transfer of risk. The buyer may also withdraw from the contract if, in the case of a particular order, it becomes impossible to carry out part of the delivery and the buyer has a justified interest in refusing partial delivery. If that is not the case, the buyer is required to pay the percentage of the contractually agreed price accounted for by the partial delivery. The same rules shall apply in the event of supplier's incapacity to provide the goods or services. In all other matters, Section VII. 2 shall apply. If it becomes impossible for the supplier to deliver goods or perform services while acceptance is delayed, or if the buyer is solely or primarily responsible for the circumstances, the buyer shall be required to pay the contractually agreed price.

7. If the supplier is delayed once the lead time for performance or delivery has expired, if the buyer (taking into account the exceptions allowed by law) gives the supplier a reasonable deadline to perform the work, and if that deadline is not met, the buyer shall be entitled to withdraw from the contract as permitted by law. At the supplier's request, the buyer undertakes to declare within a reasonable response time whether it intends to exercise its right of withdrawal. Additional claims arising from delayed delivery shall be governed solely by Section VII.2 of these terms and conditions.

IV. Transfer of Risk and Acceptance

1. At the latest, the risk shall pass to the buyer upon shipment of the goods being delivered from the factory, even in the case of partial deliveries or in the event that the supplier has undertaken to pay additional costs such as shipping expenses or perform additional services such as delivery and set-up. If an acceptance test is to be conducted, then the date of the acceptance test shall be the determining factor. The test must be performed immediately on its scheduled date. As an alternative, it can be performed following notification by the supplier that the goods are ready for acceptance testing. The buyer may not refuse acceptance if any deficiencies found are deemed insignificant.
2. If shipment or acceptance of the goods to be delivered is delayed or does not occur due to circumstances beyond the supplier's control, the risk shall pass to the buyer as of the date of notification of readiness for shipment or acceptance. The supplier undertakes to obtain, at the buyer's expense, any and all insurance policies demanded by the buyer.
3. Partial delivery or performance is permitted if deemed reasonable for the buyer.

V. Retention of Title

1. The supplier shall retain the title to the items being delivered until all payments owed, including those for ancillary goods and services owed under the contract for delivery or performance, have been received.
2. The supplier is entitled to insure, at the buyer's expense, the items being delivered against theft, fire or water damage, and other damage or loss, unless the buyer itself has taken out such insurance and can provide proof of insurance.
3. The buyer is prohibited from selling or pledging the items or assigning them as collateral. The buyer shall notify the supplier immediately in the event of attachment, seizure or similar orders by third parties.
4. If the buyer violates the agreement, particularly by defaulting in payment, the supplier shall be entitled to take back the items delivered after issuing a reminder, and the buyer shall be obligated to surrender the items.
5. Due to its retention of title, the supplier can demand the return of the items delivered only if it has withdrawn from the contract.

IV. Quality Defects

For defects in the quality of or title to the items delivered, the supplier can be held liable, to the exclusion of any additional claims and subject to the provisions in Section VII, as follows:
Defects in quality

1. At the supplier's discretion, it shall repair or replace all parts deemed defective as the result of circumstances occurring before the transfer of risk. The supplier must be notified immediately upon discovery of such defects. Replaced parts shall become the property of the supplier.

2. After consulting with the supplier, the buyer must provide it with the requisite time and opportunity deemed necessary by the supplier to rework or replace the items delivered; otherwise, the supplier shall be released from liability for the resulting consequences. Only in urgent cases (of which the Supplier must be informed immediately) involving risk to the workplace safety of workers or in order to prevent unacceptably severe losses or damage shall the buyer be entitled to remedy the defect itself or have it remedied by third parties and to demand that the supplier reimburse it for expenses incurred.

3. If the complaint proves to be justified, Supplier shall bear the expenses required for supplementary performance, provided that this does not place an unreasonable burden on Supplier. In the event of the sale of a newly manufactured item, he shall also reimburse the expenses incurred by Purchaser in the context of recourse claims in the supply chain to the extent of his statutory obligation.

4. As permitted by law, the buyer shall have the right to withdraw from the contract if the Supplier – taking into account all exceptions allowed by law – has permitted a reasonable deadline set for it to repair or replace the defective items to expire without having achieved the desired result. If the defect is only minor, the buyer shall be entitled only to a reduction in the contractually agreed price. In all other cases, the right to a reduction in the contractually agreed price is excluded.

5. Additional claims shall be governed solely by Section VII. 2 of these terms and conditions.

6. In particular, no liability will be assumed in the following cases: unsuitable or improper use; faulty installation and/or commissioning by the buyer or third parties; natural wear and tear; faulty or negligent handling; improper maintenance; unsuitable equipment; defective construction work; unsuitable building sites; and chemical, electrochemical or electrical influences – unless they fall within the supplier's area of responsibility.

7. If the buyer or a third party makes repairs incorrectly, the supplier shall not be liable for the consequences arising therefrom. The same rule applies to modifications to the items delivered undertaken without the prior consent of the supplier.

Defective Title

8. If the use of the items delivered results in the infringement of industrial property rights or copyrights inside Germany, the supplier shall at its own expense acquire for the buyer the right to continue using the delivered items or modify the items in such a manner deemed reasonable for the buyer that their use no longer infringes any industrial property rights. If this is not possible under commercially reasonable terms or within a reasonable time, the buyer shall be entitled to withdraw from the contract. The supplier shall also have the right

to withdraw from the contract under the conditions stated. In addition, the supplier shall indemnify the buyer against and hold it harmless from undisputed or legally established claims of the respective holders of industrial property rights.

9. Subject to the liability provisions in Section VII. 2, the supplier's obligations stated in Section VI. 8 above are deemed final in the event of infringement of industrial property rights or copyrights.

The supplier may be held liable only in the following cases:

- The buyer informs the supplier immediately that industrial property rights or copyrights are being asserted.
- The buyer provides the supplier with reasonable assistance in defending against the claims or enables the supplier to carry out the modifications in accordance with Section VI. 8 above.
- All rights of defense, including out-of-court settlement, are reserved for the supplier.
- The defective title is not the result of instructions issued by the buyer.
- The infringement was not caused by the buyer's unauthorized modification of the items delivered or the use thereof in a manner contrary to the agreement.

VII. Supplier's Liability and Exclusion of Liability

1. If the buyer is unable to use the items delivered in accordance with the contract as a result of suggestions or advice deliberately withheld or given in error by the supplier either before or after entering into the contract or as a result of the deliberate violation of other secondary contractual obligations, in particular, instructions on the operation and maintenance of the items delivered, the provisions of Sections VI and VII. 2 shall apply to the exclusion of any other claims being made by the buyer.

2. The supplier shall be liable for damage or losses suffered not because of the items delivered themselves – regardless of the legal reason – only in the following cases:

- a. Intentional acts
- b. Gross negligence by the owner, governing bodies, or executive managers
- c. Deliberate injury to life, limb, or health
- d. Defects that were fraudulently concealed
- e. As part of a warranty
- f. Defects in the items delivered, provided liability for personal injury or damage to personal property is being enforced in accordance with the *Produkt haftungsgesetz* (German Product Liability Act).

In the event of a deliberate breach of material contractual obligations, the supplier shall also be liable for the gross negligence of non-executive employees as well as in cases of slight negligence, restricted in the latter case, however, to reasonably foreseeable losses or damages typical of the contract. Any additional claims are excluded.

VIII. Statute of Limitations

All of Purchaser's claims (irrespective of the legal grounds) shall lapse after 12 months; this also applies to the statute of limitations for recourse claims in the supply chain in accordance with Section 445b (1) of the German Civil Code (*Bürgerliches Gesetzbuch*, BGB), unless the last contract in this supply chain is a purchase of consumer goods. This shall not affect the suspension of the limitation period of recourse claims from Section 445b(2) of the BGB. The statutory periods shall apply to damage claims under Section VII (2) a-d and f. The limitations also apply to defects in a building's structure or items delivered that were used in the process of construction in accordance with their typical purpose and that caused the defects in the building's structure.

IX. Software Usage

If the scope of delivery includes software, the buyer shall be granted a non-exclusive right to use the software supplied, including documentation. The software is provided for use with the designated item delivered. Use of the software on more than one system is prohibited. The buyer may copy, revise, and translate the software or convert it from object code into source code only to the extent allowed by law (Sections 69 a et seq. of the *Urheberrechtsgesetz* [UrhG – German Copyright Act]). The buyer undertakes not to remove the manufacturer's information, especially copyright notices, or amend them without the express, prior consent of the supplier. All other rights to the software and its documentation, including copies, remain held by the supplier or the software vendor. The issuance of sublicenses is not permitted.

X. Applicable Law and Place of Jurisdiction

1. All legal relationships between the supplier and the buyer shall be governed solely by the laws of the Federal Republic of Germany, which govern legal relationships between German parties.
2. The legal venue shall be the court having jurisdiction over the location of the supplier's registered office. Nevertheless, the supplier shall be entitled to file actions in the location of the buyer's registered office.
3. The United Nations Convention on Contracts for the International Sale of Goods (CISG) of April 11, 1980, shall not apply.