



# General Terms and Conditions of Contracts and Delivery of Products and Services in Business Transactions with Companies of LAP Laser Asia Pacific Pte. Ltd.

Status May 2016

## 1. Scope

- 1.1 These General Terms and Conditions of Contracts and Delivery ("General Terms and Conditions") shall apply exclusively to buyers who do not deal with us as consumers within the meaning of the Sale of Goods Act (Cap. 393) and the Consumer Protection (Fair Trading) Act (Cap. 52A), i.e. natural persons or legal entities that purchase the goods or service for commercial or professional purposes.
- 1.2 The terms and conditions set forth below shall apply exclusively to our business relations with our customers, also with respect to information and consultancy. Where our General Terms and Conditions are implemented in a transaction with a customer, they shall also apply to all further business relations between the customer and ourselves unless otherwise expressly agreed in writing. Differing terms and conditions of the customer shall not become part of these General Terms and Conditions or otherwise be binding on us, unless expressly acknowledged by us in writing. Our silence regarding such differing terms and conditions shall not be deemed in particular to be acknowledgement or consent, and this shall also apply to future contracts. The terms and conditions contained herein shall be applicable whether or not they are attached to or enclosed with our products. Our General Terms and Conditions shall apply in place of any conditions of purchase of the customer, even if such conditions of purchase stipulate that acceptance of an order is deemed to be the unconditional recognition of its conditions of purchase, or we deliver, after the customer has indicated the applicability of its general terms and conditions of purchase, unless we have expressly waived the applicability of our own General Terms and Conditions. By accepting our order confirmation, the customer expressly acknowledges that it waives its legal objection derived from the conditions of purchase
- 1.3 If general agreements or other agreements are concluded with our customers, such agreements shall take precedence. They shall be supplemented by these General Terms and Conditions unless more specific terms are agreed in writing between the parties.

## 2. Information / Consultancy / Characteristics of the products and services

- 2.1 Information and explanations regarding our products and services shall be provided solely on the basis of our experience to date. Values specified in this context shall be deemed average values of our products.
- 2.2 Any information about our products and services, especially illustrations, drawings, measurements, performance and equipment data or performance characteristics, and other data, especially technical data must be regarded as approximate average values. Specifications without tolerances as included in catalogues and/or brochures are subject to deviations and changes which are customary in the industry and/or differences and changes for production reasons, especially due to tolerances of raw materials and/or technical developments.
- 2.3 If we provide operating instructions, these shall be drawn up with the care customary in the industry but do not release our customers from the obligation to inspect the products carefully regarding their suitability for the purpose intended by the customers.
- 2.4 We only assume an obligation to provide advice in relation to our products and services on the basis of a separate, written consultancy agreement.
- 2.5 Reference to standards, similar technical regulations and technical information, descriptions and illustrations of the delivery item in quotations and brochures on the internet and in our advertising shall only represent a characteristic of our products when we have expressly declared the condition to be a "characteristic of the product"; these are otherwise non-binding, general specifications of performance.
- 2.6 We shall only be deemed to have given a guarantee if we have designated a characteristic and/or the outcome of performance as "guaranteed by law".
- 2.7 We shall assume no liability for the usability of our products or services for the customer's intended purpose other than liability prescribed by law unless we have agreed otherwise in writing with the customer. This shall not affect para. 11 herein.

## 3. Specimens / Demo equipment / Documents and data provided / Samples / Estimates of cost

- 3.1 Properties of specimens or samples shall only become an integral part of the contract if expressly agreed in writing. The customer is not authorised to use and pass on specimens or samples.
- 3.2 We shall retain all title and copyright to samples, illustrations, drawings, data, estimates of cost and other documents about our products and services. The customer undertakes not to disclose the samples, data and/or documents specified in the foregoing sentence to third parties unless we give our express written consent. These

samples and/or documents shall be returned to us on request unless an order based on them has been placed with us. Sentences 1 and 2 above shall apply accordingly to the customer's documents. We may, however, disclose them to third parties, to whom we are permitted to make deliveries and / or provide services under the contract or whom we use as agents. If our above-mentioned samples, data and/or documents are not returned within 7 calendar days of receipt of our request, we shall have the right at our option, as an alternative to requesting their return, to invoice them to the customer based on our current price lists valid at the time for such goods and services provided (if any).

## 4. Conclusion of contract / Scope of delivery and service / Procurement risk and guarantee

- 4.1 Our quotations and price lists are subject to change unless they are expressly designated as binding or contain binding commitments. They are merely invitations to treat or requests to customers for orders. The customer shall be bound by its order as an offer to contract for 14 calendar days after our receipt of the order unless the customer expects to receive our acceptance on a regular basis at a later date.
- 4.2 A contract is created - also in day-to-day business - only when we confirm the customer's order in writing (including by telefax or email). Where delivery is made or a service provided within the period by which the customer is bound by the order, our confirmation can be replaced by our invoice.
- 4.3 If the delivery item includes software, the customer shall have a non-exclusive, irrevocable right to use it in unchanged form, without restriction in time and place, but solely in connection with the use of the delivery item in which the software is implemented or for which it is intended, and in the case of third-party software only within the scope of the licensing terms of the third-party software producer and/or provider.
- 4.4 In the event of call orders or acceptance delays caused by the customer, we shall be authorised to procure the material for the entire order and to manufacture the total quantity ordered immediately and to buy the total quantity ordered. After the order is placed, no change requests from the customer can therefore be considered unless this was expressly agreed in writing beforehand.
- 4.5 The customer must notify us in writing in due time prior to conclusion of the contract of any special requirements of our products and/or services. Such notice shall not, however, extend our contractual obligations and liability.
- 4.6 We shall only be obliged to deliver products from our own stock.
- 4.7 Assumption of a procurement risk or a procurement guarantee does not lie solely in our obligation to deliver an object which is only defined by its type.
- 4.8 We shall only assume a procurement risk by virtue of a separate written agreement stating "we assume the procurement risk...".
- 4.9 If acceptance of the products or their shipment or the acceptance of our service is delayed for any reason for which the customer is responsible, we shall be authorised, after setting an extension of time of 14 days which has expired, at our option to request immediate payment of the purchase price and/or payment of the remuneration under the contract, or to rescind the contract or refuse performance and make a claim for all damages, losses, liabilities, costs and expenses (including legal fees on an indemnity basis) (collectively referred to in these Terms and Conditions as "damages") suffered thereby instead of full performance. The time limit must be given in writing. We shall not be required to refer again to our rights under this para. In the event of our claiming damages as stipulated above, the damages to be paid shall amount to 30 % of the net delivery price in the case of sales contracts, or 30 % of the agreed net remuneration in the case of service contracts. This shall not affect any right of either party to prove a different amount of damage or that no damage was incurred. There is no connection between the reversal of the burden of proof and the foregoing stipulations.
- 4.10 If shipment is delayed at the customer's request or for reasons for which the customer is responsible, we shall be authorised to store the goods, beginning on expiry of the period set in the notice in writing that the goods are ready for shipment, and to invoice the costs incurred for this at 2 % of the net invoice amount of the stored goods for each full week or part thereof. This shall be without prejudice to, and shall not affect, our assertion of any other rights or remedies. The customer shall have the right to prove that no costs or considerably lower costs were incurred. Furthermore, we shall be authorised, after the foregoing time limit expires, to dispose of the contract goods otherwise, and to deliver to the customer again after a reasonable time.
- 4.11 If an order or call for delivery is delayed by the customer, we shall be authorised to postpone the delivery by the same period of time as the customer is behind schedule plus a scheduling period of 4 working days at the place of our head office in Lueneburg, Germany.



4.12 Unless otherwise expressly agreed in writing or we are subject to different statutory provisions, e.g. in the case of medical devices, we shall only be required to provide user information for our products and a product label in English.

## 5. Delivery / Delivery time / Default in delivery / Packaging / Installation and assembly

5.1 Binding delivery dates and periods must be agreed expressly and in writing as binding. We shall use our reasonable endeavours to meet delivery dates and periods that are not binding or approximate (approx., about etc.).

5.2 Delivery and/or service periods shall begin with the customer's receipt of our order confirmation but not before all details about the performance of the order are clarified and all other requirements to be fulfilled by the customer are met, in particular advance payments or securities agreed are paid or provided in full. This shall apply to delivery dates and/or service dates. If the customer requests changes after placing the order, a new, reasonable delivery and/or service period shall begin when we confirm the change in the order.

5.3 Deliveries may be made and/or services provided prior to expiry of the time of delivery/service. The date of delivery (for obligations to be performed at the place of business of the provider of the products) shall be deemed the date on which the products are reported ready for shipment, otherwise the date on which the products are sent.

5.4 The customer's interest in our performance shall lapse for lack of any other written agreement only if we fail to deliver material parts or deliver with delay.

5.5 If we default in delivery, the customer must first set us a reasonable cure period or extension of time of at least 14 days - unless this is unreasonable - to perform the contract. If this elapses in vain, damage claims for breach of contract - for whatever reason - shall exist only as stipulated in para. 5.9 and 11.

5.6 We shall not be in default as long as the customer is in default in fulfilling any of its obligations towards us; this shall also include obligations under any other customer contracts.

5.7 We shall not be obliged to deliver for as long as the means of transport to be provided by the customer is not available unless we have undertaken to provide the means of transport, or it has been agreed that the obligation is to be performed at the place of business of the recipient. However, we shall be authorised, where the shipping order or call order can be carried out, to arrange delivery with our own transport or hire transport. In this case, the goods shall be transported at the customer's risk.

5.8 If no collection date which we have to confirm is given when the order is placed and acceptance does not take place on the agreed collection date, we shall ship the contract goods with a forwarding agent instructed by us. We shall invoice the customer for packaging, transport and insurance costs incurred.

5.9 If the customer incurs damage as a result of our default, the customer shall have the right, to the exclusion of any further claims, to request compensation for default. It shall amount to 0.5 % for each full week of default or part thereof but subject to a maximum aggregate of 5 % of the net value of the complete delivery and/or complete service which, as a result of the default, is not delivered by us in due time or according to the contract. Any further compensation from us for damages due to delay shall be excluded. This shall not apply in the case of compulsory statutory basis for liability.

5.10 Unless otherwise agreed, we shall take back packaging only by reason of and within the scope of our legal obligation.

5.11 Unless otherwise agreed, the following provisions shall apply to installation and assembly:

- a) The customer shall bear the costs of the following and provide the following in due time:
  - all excavation work, construction work and other auxiliary work which is outside our industry including the provision of skilled and unskilled workers, building materials and tools required to do so;
  - the requisites and materials required for assembly and start-up such as scaffolding, lifting gear and other devices, fuel and lubricants;
  - energy and water at the place of use including connections, heating and lighting;
  - sufficiently large, suitable, dry and lockable rooms at the assembly site to store machine parts, apparatus, materials, tools etc. and suitable work and recreation rooms for the assembly personnel including sanitary installations which are appropriate to the circumstances; furthermore, the customer must take all measures to protect our tools and our property and assembly personnel on the building site that the customer takes to protect its own employees and property; and
  - protective clothing, equipment and safeguards that are required given the special circumstances of the assembly site.

Before assembly work begins, the customer shall, without being asked to do so, provide in writing the necessary information about the position of concealed electricity lines, gas and water pipes or similar installations and the necessary static data.

Before the installation or assembly begins, the equipment and items required to start work must be at the installation or assembly site, and all preliminary work prior to commencement of assembly must have progressed so that the installation or assembly can begin as agreed and can be performed without

interruption. Access roads and the place of installation or assembly must be levelled and cleared.

- b) If the installation, assembly or start-up are delayed for reasons beyond our control, the customer shall bear the costs for the waiting time and additional travel required of our assembly personnel.
- c) Each week the customer shall certify to us immediately the duration of our assembly personnel's working time and the termination or completion (as the case may be) of the installation, assembly or start-up.
- d) If we request acceptance of the delivery, the customer shall carry this out immediately upon completion. If the customer fails to do so, acceptance shall be deemed carried out. Acceptance shall also be deemed carried out when the delivery item is being used commercially, if applicable after an agreed test period has ended.

## 6. Force majeure / Delivery subject to punctual delivery to us on the part of our subcontractors

6.1 If we do not receive a delivery or service from our sub-contractors to allow us to provide our delivery or service which is due from us under the contract, despite due and proper stocking in terms of quantity and quality under our delivery or service agreement with the customer, for reasons for which we are not responsible, or it is incorrect or not in due time, or events of force majeure occur of significant duration (i.e. of longer than 14 calendar days), we shall notify our customer in writing in due time. In such case, we shall be authorised to postpone the delivery for the duration of the obstruction or event, or to rescind the contract in whole or in part for that part of the contract not yet fulfilled if we have met our foregoing duty to provide information and have not assumed a procurement risk. Events of force majeure shall be deemed to be any cause affecting the performance of the contract arising from or attributable to the acts, events, omissions or accidents beyond the control of the party to perform and, without limiting the generality thereof, shall include strikes, lock-outs, official intervention, war, riot, power shortages and shortages of raw materials, transport bottlenecks through no fault of our own, company obstructions not due to us e.g. fire, water and damage to machinery and any other obstructions which, when considered objectively, were not caused by our negligence.

6.2 If a delivery and/or service date or delivery and/or service period is agreed with binding force and the agreed delivery or service date or the agreed delivery and/or service period is exceeded due to events according to para. 6.1., the customer shall be authorised, after a reasonable extension of time has elapsed without success, to rescind the contract for that part of the contract not yet fulfilled. The customer shall have no further claims, especially claims for damages, in this case.

6.3 The above provision according to para. 6.2 shall apply accordingly if, for the reasons stated in para. 6.1, also without contractual agreement of a fixed delivery and/or service date, the customer cannot be objectively expected to adhere further to the contract.

## 7. Shipment / Passing of risk

7.1 Unless otherwise agreed in writing, delivery shall be ex works, and, where there is no obligation to be performed at the place of business of the provider or no obligation to be performed at the place of business of the recipient, shall be insured by a freight forwarder instructed by us as an obligation to be performed at the place of business of the provider where the provider must dispatch the goods or remit the money to the recipient. In the case of an obligation to be performed at the place of business of the provider or obligation to be performed at the place of business of the provider where the provider must dispatch the goods or remit the money to the recipient, the goods shall be shipped at the customer's risk and expense.

7.2 Unless otherwise agreed, we reserve the right to choose the route and means of transport where shipment is agreed, or if no collection date is agreed, the right to choose the abovementioned obligation to be performed at the place of business of the provider where the provider must dispatch the goods or remit the money to the recipient. We shall, however, endeavour to take the customer's wishes into account with respect to the route and type of shipment. Any additional expenses as a result - also where delivery freight paid is agreed - shall, like the transport and insurance costs, be borne by the customer. If shipment is delayed at the customer's request or through the customer's fault, we shall store the goods at the customer's expense and risk. In this case, notice that the goods are ready for shipment shall be deemed equivalent to acceptance of shipment.

7.3 The risk of accidental loss or accidental deterioration shall pass to the customer when the products to be delivered are handed over to the customer, forwarding agent, freight carrier or other firms entrusted with shipping the products but at the latest when the products leave our works, warehouse or branch unless performance of the obligation at the place of business of the recipient is agreed. The foregoing shall also apply if an agreed partial delivery is carried out. The risk of accidental loss or accidental deterioration shall pass to the customer in the case of deliveries made by us in connection with an installation or assembly when the deliveries enter the customer's premises.

7.4 If delivery is delayed because we assert our right of retention due to the customer's default in payment in whole or in part or due to another reason for which the customer is responsible, the risk shall pass to the customer at the latest as of the date on which the notice is sent to the customer stating that the delivery is ready for shipment and/or the service can be performed.



## 8. Notice of defects / Breach of contract due to material defects / Warranty

- 8.1 The customer must give us notice of material defects no later than 7 days after collection, in the case of delivery ex works, or otherwise after delivery. Notice of latent material defects must be given to us immediately after they are discovered but at the latest within the limitation period in respect of warranty according to para. 8.6. A notice of defects that fails to comply with requirements of time shall, subject to applicable law, exclude any claim by the customer for breach of contract due to material defects.
- 8.2 The transport operator must also be notified of any material defects on delivery, and the recording of defects in writing must be arranged by the transport operator. Failure to have the transport operator arrange the recording of defects in due time shall exclude any claim by the customer for breach of contract due to material defects. This shall not apply in the case of compulsory statutory basis for liability.
- If defects in quantity and weight were already ascertainable upon delivery according to the foregoing duties to inspect, the customer must make a complaint about the defects to the transport operator upon receipt of the products, and have this complaint certified by the transport operator. Claims based on the wrong quantity being delivered shall not be made in the case of only a slight deviation from the agreed quantity, where to do so would be unreasonable on the part of the customer. Failure to give notice of defects in due time to the transport operator shall also exclude any claim by the customer arising from breach of contract due to material defects. This shall not apply in the case of compulsory statutory basis for liability.
- 8.3 When handling, processing, combining or mixing with other goods begins, the products delivered shall be deemed accepted by the customer according to the contract. This shall also apply if the products are shipped on from their original destination.
- Before any of the above activities begin, the customer shall be solely responsible for clarifying through appropriate checks in terms of scope and method, whether the delivered products are suitable for the purposes intended by the customer.
- 8.4 The customer must give notice in writing immediately of any other breach, setting a reasonable time limit for remedy, before asserting any further rights.
- 8.5 If, by way of exception, the breach does not relate to the performance of the contract by us, the contract may not be rescinded if the breach is immaterial.
- 8.6 We shall provide a warranty for material defects, unless otherwise expressly agreed in writing, for a period of 12 months, calculated from the date the risk passes (see para. 7), in the case of refusal to accept or take delivery by the customer from the date of the notice that the goods are ready to be taken over. This shall not apply to damage claims for any fraudulent act or where a longer period is stipulated by applicable law.
- 8.7 The customer's sole remedy for the failure of our products to conform to specifications or for breach of the warranties provided herein shall be limited to either: (a) rectification or replacement of the defective or non-conforming product (at our discretion); or (b) after two unsuccessful attempts to rectify the defect, a reduction of price or cancellation of the contract and reasonable compensation for damages or losses incurred by the customer.
- 8.8 If the customer or a third party rectifies a defect incorrectly, we shall not be liable for the resulting consequences. This shall also apply to any modifications of the delivery item undertaken without our prior consent.
- 8.9 Further claims by the customer for or in connection with defects or consequential damage caused by a defect, for whatever reason, shall exist only subject to the provisions of para. 8.10 and 11.
- 8.10 Damage claims of the customer against ourselves due to a material defect of goods delivered by us shall be excluded. This shall not apply in the case of compulsory statutory basis for liability.
- 8.11 Our warranty (claims for breach of contract due to defective performance in the case of material defects) and liability arising herefrom shall be excluded if defects and damages connected therewith cannot be proven to be due to defective material, defective design or defective performance or defective instructions on use. Warranty and liability arising herefrom shall be excluded in particular with respect to the consequences of incorrect use or exceptional wear and tear of the products, excessive use or inappropriate storage conditions, for example, the consequences of chemical, electromagnetic, mechanical or electrolytic influences that do not correspond with expected average standard influences. This shall not apply in the case of compulsory statutory basis for liability.
- 8.12 We shall not provide a warranty for parts which are subject to wear and tear when products are used incorrectly and/or have to be regularly exchanged by the customer to maintain their proper function or are otherwise subject to normal use or wear and tear, and we shall not provide a warranty for consumables whose 'best before' date is limited or has expired, where malfunction is caused by wear and tear or because the 'best before' date has expired. This shall also apply to products where the defect occurred after the 'best before' date expired if the defect is due to expiry of the 'best before' date.
- 8.13 Claims by the customer for expenses required for subsequent performance, in particular transport, travel, labour and material costs shall be excluded if the expenses increase because the delivery item has been transferred subsequently to a location other than the customer's premises unless in doing so this complies with its intended use.
- 8.14 Claims based on defects shall not be made in the case of only a minor deviation from the agreed or customary condition or usefulness.

- 8.15 Notification of breach of contract in the form of material defects shall only be valid when given in writing.

## 9. Prices / Payment terms / Objection of uncertainty

- 9.1 All prices are on principle quoted net in EURO and exclude packaging, freight, insurance costs, duties, levies and value added or other taxes at the applicable rate which shall be borne by the customer.
- 9.2 If we have agreed to perform the installation or assembly and unless otherwise agreed, the customer shall bear, apart from the agreed remuneration, all necessary ancillary costs such as travel expenses, costs for transporting hand tools and personal luggage and daily allowances.
- 9.3 Services that are not an integral part of the agreed scope of delivery shall be charged, unless otherwise agreed, based on our prevailing price lists at the time.
- 9.4 We are authorised at our reasonable discretion to increase the remuneration payable unilaterally and reasonably where material procurement costs, wage and ancillary wage costs as well as energy costs and costs due to environmental charges are increased, if more than 3 months elapses between conclusion of the contract and delivery.
- 9.5 If, according to the contract, we bear the freight charges by way of exception, the customer shall bear any additional costs arising from increases in freight rates after the contract was concluded.
- 9.6 Unless otherwise agreed, our invoices shall be payable within 30 calendar days of the invoice date, where the customer collects the goods itself as of receipt of our notice that the goods are ready for delivery, without deduction of any kind.
- 9.7 If the customer fails to make payment, the customer shall be in default, also without notice, within 31 calendar days of receipt of the invoice in the case of an obligation to dispatch and in the case of an obligation to be performed at the place of business of the recipient, and within 31 calendar days after the customer's receipt of our notice that the goods are ready for delivery.
- 9.8 Once in default, default interest shall be charged at the rate of 2% per month or the maximum rate allowed by law, whichever is lower, from the due date up to the date of actual payment (before as well as after judgment). We reserve the right to claim damages in excess of this.
- 9.9 The date payment is received by us or credited to our account at the place of payment specified by us shall be deemed the payment date.
- 9.10 The customer's default in payment shall cause all claims for payment under the business relationship with the customer to become due immediately. Regardless of any agreements to defer payments, agreements on the term of bills of exchange or payment by instalment, in such event all the customer's liabilities due to us shall become due for payment immediately.
- 9.11 If payment terms are not met or circumstances known or recognisable that, in our proper commercial judgement, give rise to doubt about the customer's creditworthiness, also including such facts that existed when the contract was concluded but which were unknown to us or could not have been known to us, we shall be authorised, without prejudice to our other rights and remedies in such cases, to cease further work on current orders or delivery, and to request advance payments or the provision of appropriate, customary securities, e.g. in the form of a bank guarantee issued by a bank acceptable to us, for deliveries still outstanding, and, after expiry of a reasonable period of time to provide such securities is unsuccessful, to rescind the contract, irrespective of other rights. The customer shall be obliged to reimburse us for all damages incurred by the non-performance of the contract.
- 9.12 The customer shall have a right of retention or right of set-off only with respect to those counter-claims that are not disputed or have been awarded by final judgment.
- 9.13 The customer can only exercise a right of retention if its counter-claim relates to the same contractual relationship.
- 9.14 We shall only accept bills of exchange offered as an exception by way of express agreement in writing. We shall make discount charges from the due date of the invoice until the maturity date of the bill of exchange as well as charge costs for the bill of exchange. The customer must bear interest and the costs for the discounting or redemption of bills of exchange. With regard to bills of exchange and cheques, the date of their redemption shall be deemed the payment date. In the event of our company's bank refusing to discount a bill of exchange or in the event of reasonable doubt that a bill of exchange shall be discounted during the term of the bill of exchange, we shall be entitled to request immediate payment in cash while the bill of exchange is taken back.
- 9.15 If the customer fails to return bank guarantees and/or guarantees received from us in due time, the customer shall reimburse us for all costs and charges incurred by us as a result as of the date of default in returning the guarantees.

## 10. Retention of title / Right of lien

- 10.1 We retain title to all equipment and goods we deliver (hereinafter referred to collectively as "goods subject to retention of title") until all our claims under the business relationship with the customer, including claims arising in the future from contracts concluded at a later date, are paid. This shall also apply to any balance in our favour when any or all claims by us are incorporated in a current account and the balance has been established.



- 10.2 The customer must insure the goods subject to retention of title adequately, in particular against fire and theft. Claims against the insurance arising from a case of damage relating to goods subject to retention of title shall be and are hereby assigned to us to the full value of the goods subject to retention of title.
- 10.3 The customer is authorised to resell the delivered products in the normal course of business. The customer is not permitted to make other disposals, especially pledging or granting of equitable lien. If the goods subject to retention of title are not paid for immediately by third party buyers when resold, the customer shall be obliged to resell under retention of title only. Authorisation to resell the goods subject to retention of title shall not apply a priori if the customer suspends payment or defaults in payment to us.
- 10.4 The customer hereby assigns to us all claims including securities and ancillary rights that accrue against the end user or third parties from or in connection with the resale of goods subject to retention of title. The customer may not reach an agreement with its purchasers that excludes or impairs our rights in any way or nullifies the claim's assignment in advance. When the goods subject to retention of title are sold with other items, the claim against third party buyers amounting to the delivery price agreed between ourselves and the customer shall be deemed assigned unless the amounts applicable to the individual goods can be determined from the invoice.
- 10.5 The customer shall be entitled to collect claims assigned to us until revoked by us, such revocation to be made at our discretion at any time and from time to time. At our request, the customer shall be obliged to give us the information and documents in full required to collect assigned claims, and unless we do so ourselves, notify its buyers immediately of the assignment.
- 10.6 If the customer incorporates claims from the resale of goods subject to retention of title in a current account relationship with its buyers, the customer shall assign to us any recognised closing balance in its favour in the amount which corresponds to the total amount of the claim from the resale of our goods subject to retention of title, such claim being transferred to the current account relationship.
- 10.7 The customer must notify us immediately if the customer has already assigned claims to third parties from the resale of products delivered or to be delivered by us, especially due to real or unreal factoring arrangements, or other agreements which can impair our current or future security interests according to para. 10. In the case of unreal factoring, we shall be authorised to rescind the contract and request the products already delivered to be handed over. This shall also apply to real factoring if, according to the contract with the factor, the customer is not free to dispose of the purchase price of the claim.
- 10.8 In the event of customer's breach of the contract, especially in the case of default in payment, we shall be authorised, after rescinding the contract, to take back all goods subject to retention of title. The customer shall be obliged in this case to hand over the goods subject to retention of title automatically. We may at any time during normal business hours enter the customer's business premises to determine the stock of the goods delivered by us. Taking back the goods subject to retention of title shall only amount to a rescission of the contract if we expressly state this in writing or this is prescribed by applicable law. The customer must notify us immediately in writing of any third-party access to goods subject to retention of title or any claim assigned to us.
- 10.9 If the value of securities existing for us according to the foregoing provisions exceeds the secured claims as a whole by more than 20 %, we may at our option release part of the securities.
- 10.10 We handle and process the goods subject to retention of title as manufacturers without obligation on our part. If the goods subject to retention of title are processed or connected inseparably with other items that do not belong to us, we shall acquire co-ownership in the new article in the ratio of the invoice value for our goods to the invoice values for the other processed or connected items. If our goods are connected with other movable items into an article that is deemed the principal article, the customer shall immediately assign co-ownership thereof to us in the same ratio. The customer shall hold such ownership or co-ownership free of charge in trust on our behalf. Rights of co-ownership accordingly arising shall be deemed goods subject to retention of title. The customer shall be obliged at any time at our request to provide us with the information required to assert our ownership or co-ownership rights.

#### 11. Exclusion / Limitation of liability

- 11.1 We shall not be liable for any claims by the customer for damages or reimbursement of expenses, for whatever legal reason, whether in contract, tort or otherwise (including negligence or breach of statutory duty).
- 11.2 The above exclusion of liability shall not apply if statutory liability is obligatory, and: - in the case of intentional or grossly negligent breach by us and intentional or grossly negligent breach by our legal representatives or agents; or - in the event of injury to life, limb or health, also caused by our legal representatives or agents;
- 11.3 Any further liability shall be excluded and without derogating from the generality of the foregoing, we shall not under any circumstance be liable to anyone for indirect, incidental, special, consequential, punitive or exemplary damages of any kind, including, but not limited to, any lost profits, goodwill, business and/or savings, however caused, whether for breach or repudiation of contract, tort, breach of warranty, negligence, or otherwise, whether or not we were advised of the possibility of such loss or damages.
- 11.4 Exclusion and limitation of liability according to para. 11.1 to 11.4 above and para. 11.6 below shall apply to the same extent for the benefit of our employees and agents as well as our sub-contractors.

- 11.5 Claims by the customer for damages may only be asserted within a period of one year from the date that the right to claim damages accrues.
- 11.6 There is no connection between the reversal of the burden of proof and the foregoing stipulations.

#### 12. Place of performance / Legal venue / Applicable law

- 12.1 Place of performance for all contractual obligations is our company's registered office in Singapore except where an obligation to be performed at the place of business of the recipient is assumed.
- 12.2 Any dispute, whether contractual or not, arising out of or in connection with these Terms and Conditions or any contract governed by these Terms and Conditions (including any question regarding its existence, validity or termination) shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC") for the time being in force, which rules are deemed to be incorporated by reference in this para. The arbitration tribunal shall consist of one (1) arbitrator to be appointed by the President of the SIAC. The language of the arbitration shall be English. Notwithstanding the requirement to refer disputes to arbitration, either party may bring an action (a) for injunctive or similar mandatory or prohibitory relief in any court of competent jurisdiction, and (b) for any interlocutory or interim relief, including, without limitation, any proceedings for the detention, custody or preservation of any property, pending the results of the arbitration.
- 12.3 These Terms and Conditions shall be governed by and construed in accordance with the laws of Singapore, without regard to principles of conflict of laws and in particular to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

#### 13. Property rights

- 13.1 Unless otherwise agreed, we shall be obliged only to deliver goods in Singapore that are exempt from third-party intellectual property rights and copyrights. If a third party raises justified claims on account of infringement of intellectual property rights by products delivered by us to the customer, we shall be liable to the customer within the time limit specified in 8.6. as follows:
- We shall first at our option try to obtain a right of use at our expense for the deliveries in question or change the delivery item while complying with the characteristics agreed under the contract so that the intellectual property right is not infringed, or exchange the deliveries. If we cannot do so on reasonable conditions, the customer shall be entitled to its legal rights which shall be defined on the basis of these Terms and Conditions.
  - The customer shall, in the event of infringement of intellectual property rights by our delivery items, only be entitled to rights if it gives us written notification immediately about the claims asserted by third parties, does not admit any infringement and all defensive measures and settlement negotiations to avert the claims are reserved for us.
- If the customer stops using the products or services for the purposes of minimising or mitigating damage or other good cause, the customer shall be obliged to advise the third party that cessation of use is not deemed to be an acknowledgement of an intellectual property right infringement.
- If an appeal is filed by third parties against the customer for infringement of intellectual property rights resulting from the use of products or services delivered by us, the customer undertakes to notify us immediately in writing and give us the opportunity to participate in any legal dispute. The customer must support us in every way in conducting such a legal dispute. The customer must not take any action which could impair our legal position.
- 13.2 The customer shall have no claims if it is responsible for infringement of an intellectual property right. The customer shall also have no claims if the infringement of the intellectual property right is due to the customer's special instructions, an application which we could not foresee or the fact that the products are modified by the customer or used with products we did not deliver.

#### 14. Export control / Product approval

- 14.1 In the absence of any other contractual agreements with the customer, the delivered goods are intended for placement on the market for the first time within Singapore (first country of delivery).
- 14.2 The export of certain goods may be subject to approval from the relevant authorities (e.g. because of their nature or intended purpose or final destination). The customer itself is obliged to comply strictly with all relevant export regulations and embargos for these goods. Furthermore, the customer shall be obliged, if the goods are transferred to a country which is different country than the first country of delivery agreed with us, to obtain the required national product approvals or product registrations and to ensure that the specifications set out in the applicable laws of the country in question regarding the provision of user information in the national language are complied with.
- 14.3 The customer shall in particular check and ensure that
- the goods delivered are not intended for use in armaments, nuclear facilities or weapon technology;
  - no companies or persons specified on the US Denied Persons List (DPL) are supplied with original US goods, US software and US technology;



- no companies or persons specified on the US Warning List, US Entity List or US Specially Designated Nationals List are supplied with US certificates of origin without relevant approval;
  - no companies or persons are supplied who are specified on the List of Specially Designated Terrorists, Foreign Terrorist Organizations, Specially Designated Global Terrorists or the EU Terror List;
  - no military recipients are supplied with the products delivered by us;
  - no recipients are supplied that violate other export control regulations;
  - all notices, orders and regulations of the competent authorities of the respective country of origin of the delivery are complied with.
- 14.4 Goods delivered by us may only be accessed and used if the above-mentioned checks and assurances have been carried out and complied with. Otherwise we shall not be obliged to perform any of our obligations hereunder.
- 14.5 Where goods delivered by us are passed on to third parties, the customer undertakes to oblige such third parties in the same way as specified in para. 14.1-14.6, and to notify them of the need to comply with these provisions.
- 14.6 The customer shall indemnify us against all damages resulting from breach of the foregoing duties set out in para. 14.1-14.5.

**15. Institution of insolvency proceedings / Incoterms / Written form / Severability clause**

- 15.1 If the customer (i) becomes bankrupt or insolvent, (ii) makes an assignment or composition for the benefit of or of creditors, (iii) becomes subject to an administrative order, (iv) an encumbrancer takes possession of, or a receiver is appointed in respect of, any of its assets, or (v) the customer's suspension of payment which is not due to rights of retention or other rights under these Terms and Conditions, shall entitle us to rescind the contract at any time or make delivery of the delivery item or our service dependent on the prior fulfilment of the payment obligation. If the delivery item was already delivered, the consideration shall be due immediately in the above-mentioned cases. We are also entitled to reclaim the delivery item in the above-mentioned cases and to retain them until the purchase price is paid in full.
- 15.2 If trade terms were agreed according to the International Commercial Terms (INCOTERMS), INCOTERMS 2010 shall apply.
- 15.3 All agreements, collateral agreements, assurances and contract amendments shall only be valid when given in writing. Verbal contract amendments or modifications shall be invalid. For the purposes of these Terms and Conditions, the words "written" and "in writing" include any means of visible reproduction.
- 15.4 If any current or future provision of the contract or these Terms and Conditions is or shall become invalid/void or unenforceable in whole or in part for any reason, this (i) shall not invalidate/void or render unenforceable such provisions in any other jurisdiction; (ii) are hereby waived or amended to the extent necessary to achieve the same economic effect for these Terms and Conditions to be enforceable in such jurisdiction; and (iii) the rest of these Terms and Conditions shall remain in full force and effect.
- 15.5 A person who is not a party to any contract governed by these Terms and Conditions has no right under the Contracts (Rights of Third Parties) Act (Cap. 53B) to enforce any of these Terms and Conditions.

**Note:**

We draw attention to the fact that contracts are processed by our company or our agents, and that we also in this respect store data received as a result of the business relationship with the customer.

Singapore, May 2016

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