

General Terms and Conditions of Delivery (Oct. 2014)

Clause 1: Scope

- (1) All products, services and quotations provided by the Vendor are made exclusively on the basis of these General Terms and Conditions of Delivery. They form part of all contracts concluded by the Vendor with its contractual parties (hereinafter each referred to as "Customer") in respect of products and services offered by the Vendor. They also apply to all future products, services and quotations for the Customer, even where they are not separately agreed upon.
- (2) The terms and conditions of the Customer or a third party shall not be applicable even if the Vendor has not expressly precluded their validity in a given instance. Even if the Vendor refers to a letter containing or mentioning the Customer's terms and conditions or those of a third party, this shall not constitute the Vendor's approval of the validity of those terms and conditions.

Clause 2: Quotation and conclusion of a contract

- (1) All the Vendor's quotations are conditional and subject to change unless expressly specified as binding or unless they contain a specific period of acceptance. Purchase orders or job orders may be accepted by the Vendor within fourteen days of receipt.
- (2) The legal relations between the Vendor and the Customer are exclusively subject to the relevant written purchase contract, including these General Terms and Conditions of Delivery. The said contract contains all the points agreed between the parties in respect of its object. Verbal undertakings by the Vendor prior to the conclusion of this contract are not legally binding, and verbal agreements between the parties shall be replaced by the written contract unless a given verbal agreement expressly specifies that those agreements should continue to be binding and applicable.
- (3) Any changes and amendments to agreements concluded between the parties, including these General Terms and Conditions of Delivery, are only valid if they have been made in writing, with signatures. Except for managing directors and authorised representatives, Vendor's staff are not entitled to conclude verbal agreements which differ from this provision. To meet the written form requirement (i.e. in writing, with signature), it is sufficient for a statement to be sent electronically - in particular, by fax or email - provided that the copy which is sent contains the relevant signature.
- (4) Vendor's details of the product or service (e.g. weights, dimensions, performance characteristics, load-bearing capacity, tolerances and technical details) and our depictions of the same (e.g. drawings and photographs) are no more than approximately definitive, unless usability requires an exact match for the contractually specified purpose. They are not warranted quality characteristics, but descriptions or specifications of the relevant product or service. Commercially customary deviations, variations that have been implemented on account of legal provisions or which constitute technical improvements and

replacements of components by equivalent parts are permitted provided that they do not interfere with usability for the contractually specified purpose.

- (5) The Vendor reserves its ownership rights and copyrights on all quotations and cost estimates which it issues as well as on any drawings, photographs, calculations, brochures, catalogues, models, tools and other documents and resources given to the Customer. The Customer is not permitted to make such items accessible to third parties, disclose them, use them and duplicate them – neither the items themselves nor their content – without obtaining prior permission from the Vendor; neither must the Customer permit others to undertake such actions. If requested by the Vendor, the Customer shall return such items to the Vendor in their entirety and shall destroy any copies the Customer may have made as soon as those items or copies are no longer required in the ordinary course of business or in the event that negotiations do not lead to the conclusion of a contract.

Clause 3: Prices and terms of payment

- (1) Prices apply to the scope of products and services listed in the relevant order acknowledgements. Any additional and special services are charged separately. All prices are quoted in euros, ex works, plus packaging, VAT and – in the case of export shipments – customs and any other fees and public charges.
- (2) Any cost increases that are not within the Vendor's responsibility (particularly general increases in the cost of labour and/or materials) shall entitle the Vendor to effect a reasonable price increase if shipment is due at least four weeks or later after the conclusion of the contract or in the event of continuous financial obligations. Any change to the rate of VAT shall always be followed by equivalent price adjustments at the same rate.
- (3) In cases where agreed prices are based on the Vendor's list prices and where delivery is scheduled more than four months after the conclusion of the contract, delivery shall be subject to whatever Vendor's list prices are valid at the time of delivery (less any agreed discount, either fixed or as a percentage).
- (4) A separate invoice shall be written for each shipment, with the shipping date as the date of the invoice. This also applies to any partial shipments that have been agreed.
- (5) Invoiced amounts are payable without deductions within 30 days, unless otherwise agreed in writing. The official date of payment shall be the date on which an amount is received by the Vendor. Cheques shall not be considered settled until they have been cashed in. If the Customer fails to make payment by the due date, then the outstanding amount shall be subject to 8% interest p.a., counting from the relevant due date; the Vendor reserves the right to charge higher interest and further damages in the event of payment arrears.
- (6) If discount has been agreed between the parties, the Customer is only entitled to make the relevant deductions

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if it has settled any new invoices arising from other shipments. Discount only relates to the goods value, exclusive of VAT, freight and packaging.

- (7) The Customer may only offset its counterclaims or withhold payments for such claims if the counterclaims are either undisputed or have been established by a court of law.
- (8) In the event of a justified notification of defect the Customer may only withhold payment to the extent that this is in reasonable proportion to the material defect that has occurred.
- (9) The Vendor is entitled to make the delivery of outstanding products or services dependent upon advance payment or upon the payment of a security deposit if it learns after the conclusion of the contract that there are circumstances which may substantially reduce the Customer's creditworthiness or which jeopardise the Customer's outstanding payments to the Vendor, arising from the contract (including outstanding payments from other individual orders placed by the Customer and subject to the same framework agreement).

Clause 4: Delivery and delivery period

- (1) Shipments are made ex works from our plant in Wörth.
- (2) Any dates and time limits envisaged by the Vendor for services or products are no more than approximate unless they have been expressly confirmed by the Vendor or agreed by the parties as fixed dates or time limits. If shipment has been agreed, delivery dates and periods refer to the date of the handover to the carrier, the forwarding company or any other third party instructed to handle shipment.
- (3) Notwithstanding the Vendor's rights arising from the Customer's delay, the Vendor is entitled to require an extension of time limits for delivery and performance or to a delay of delivery and performance dates by the period of time during which the Customer has failed to meet its contractual commitments towards the Vendor.
- (4) The Vendor shall not be held liable in cases where delivery is impossible or where a delivery is delayed due to force majeure or an event which was unforeseeable at the time of concluding the contract and which is not within the Vendor's responsibility (e.g. breakdowns, malfunctions or failures of all kinds, difficulties in procuring materials or energy, transport delays, strike action, legitimate lockouts, shortage of human resources, energy or raw material, difficulties in obtaining required official permits, government action or lack of deliveries from suppliers or incorrect or late deliveries from suppliers). The Vendor is entitled to cancel the contract if such events substantially aggravate performance or delivery or if they make delivery impossible and if, furthermore, such an impediment is not just of a temporary nature. If an impediment is temporary, then the delivery or performance deadlines shall be extended/postponed by the period covered by the impediment plus a reasonable start-up period.

If it is unreasonable for the Customer to accept performance or delivery due to the delay, then the Customer may cancel the contract with the Vendor by immediately issuing a written statement.

- (5) The Vendor shall only be entitled to deliver partial shipments on condition that
 - partial shipments can be used by the Customer for the contractually specified purpose,
 - the delivery of the remaining goods is assured, and
 - this does not cause the Customer substantial additional work or expenses (unless the Vendor is expressly prepared to bear the costs).
- (6) In the event of custom-made products it is possible to deliver short or excess deliveries of up to 10%, which shall then be reflected appropriately on the invoice.
- (7) If the Vendor is in arrears with performance or delivery or if performance or delivery is impossible for the Vendor, regardless of the reasons, then the Vendor's liability shall be limited to damage compensation as specified in clause 8 of these General Terms and Conditions of Delivery.
- (8) If a call-off contract has been concluded without an agreement on manufacturing and delivery dates, the Vendor shall be entitled to require the binding specification of such dates if three months have passed after the Vendor's order acknowledgement and if no such dates have been specified by the Customer. If the Customer fails to meet this request within two weeks of receiving it, the Vendor shall be entitled to set the Customer a reasonable additional period with a warning of refusal, requesting that the Customer should issue a relevant statement, and, if the request remains unfruitful within the specified period, to cancel the contract or to request the payment of any damages for loss suffered by the Vendor. The same applies if the Customer fails to call off the delivery volumes specified in a call-off contract or if the Customer does not do so in full.

Clause 5: Place of performance, shipping, packaging, transfer of risk, formal acceptance

- (1) Unless otherwise agreed, the place of performance for all obligations arising from the contract shall be Wörth am Rhein. If the Vendor also owes installation, then the place of performance shall be the place where installation is intended to take place.
- (2) The shipping method and the packaging are at the Vendor's reasonable discretion.
- (3) The risk shall be transferred to the Customer no later than the handover of the delivered item (the relevant point in time being the commencement of the loading process) to the carrier, forwarding company or any other third party instructed to conduct shipment. This also applies if partial shipments have been made or if the Vendor has also taken over other services (e.g. shipping or installation). If shipping or the handover is delayed due to circumstances within the Customer's responsibility, then the risk shall be

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transferred to the Customer on the day when the relevant item is ready for shipment and when the Customer has been notified by the Vendor accordingly.

- (4) Any storage expenses after the transfer of risk shall be borne by the Customer. If the relevant items are stored by the Vendor, storage expenses for the stored items shall be 0.25% of the invoiced amount per complete week. This is subject to the entitlement to claim either additional or lower storage costs, upon the provision of documentary evidence.
- (5) The shipment shall only be insured by the Vendor against theft, breakage, transport damage, fire or water damage or against any other insurable risks upon the Customer's express request and at the Customer's expense.
- (6) If formal acceptance is required, the purchased item shall be deemed accepted if
 - shipment and – where owed by the Vendor – installation have been concluded,
 - the Vendor has notified the Customer of this circumstance with reference to assumed acceptance as detailed in this provision, clause 5.6, and has requested the Customer to effect formal acceptance,
 - twelve days have passed since delivery or installation or the Customer has started using the purchased item (e.g. has started up the delivered machinery) and six working days have passed since delivery or installation, and
 - the Customer has failed to effect formal acceptance within this period, but has failed to do so for some reason which is not related to a defect that has been communicated to the Vendor – a defect which makes it impossible to use the purchased item or which presents a substantial obstacle to using the item.

Clause 6: Warranty and material defects

- (1) The warranty period shall be one year counting from delivery or, if formal acceptance is required, from the date of formal acceptance.
- (2) As soon as the relevant items have been delivered to the Customer or a third party appointed by the same, they must be thoroughly examined. As regards apparent defects or any other defects that should have been recognised upon immediate thorough examination, they shall be regarded as accepted by the Customer, unless the Vendor receives written notification of the relevant defects within seven working days of delivery. As regards other defects, delivered items shall be considered as approved by the Customer if the relevant notification does not reach the Vendor within seven working days of the date when the defect became apparent; if, however, the defect was already apparent to the Customer at an earlier date, under normal use, then this earlier date shall be the relevant one for determining the beginning of the notification period. If requested by the Vendor, a delivered item that has become subject to a complaint shall be returned to the Vendor free of freight charges. If notice of defect is justified, the Vendor shall reimburse the cost of the

cheapest form of carriage; this shall not apply if such cost is higher because the delivered item is in a different place, other than the place of its intended use.

- (3) After a reasonable period specified at the Vendor's discretion, material defects in delivered items shall mean that the Vendor is initially obliged and entitled to remedy the defect or to deliver a replacement. If remedial action or replacement fails, i.e. if either of the two options is impossible, unreasonable, refused or inappropriately delayed, then the Customer may either cancel the contract or appropriately reduce the purchase price.
- (4) The Vendor shall only pay costs for remedial action if they are appropriate within its duty to minimise damages. Appropriate costs are, in particular, costs corresponding to the standard SKA times as specified in the Annex for repair and maintenance instructions.
- (5) If a defect is the Vendor's fault, then the Customer may require damage compensation under the provisions of clause 8.
- (6) If defects occur in the components of other manufacturers and if the Vendor cannot remove those defects for licensing reasons or for de-facto reasons, then the Vendor shall, at its discretion, either assert its warranty claims towards the relevant manufacturers and suppliers while charging the costs to the Customer, or it shall cede those claims to the Customer. In the event of such defects, under the miscellaneous conditions and in accordance with these General Terms and Conditions of Delivery, warranty claims can only be asserted against the Vendor if legal assertion of the aforementioned claims has been unsuccessful towards the manufacturer and supplier or if legal assertion is pointless, e.g. due to insolvency. The limitation period that is applicable to the Customer's warranty claims towards the Vendor shall be suspended for the duration of the legal dispute.

- (7) The warranty shall cease to be valid if the Customer or an instructed third party has modified the delivered item without the Vendor's consent and in a way that makes it impossible or unreasonably difficult to remedy the defect. In either case the Customer shall bear any additional costs for the removal of the defect that have been incurred through the modification.
- (8) If, in a specific case, the parties have agreed on the delivery of used items, delivery shall be effected without any warranty for material defects whatsoever.

Clause 7: Industrial property rights

- (1) As specified in this clause 7, the Vendor gives its assurance that the delivered item is free from industrial property rights and third-party copyrights. Either party shall notify the other party immediately and in writing if a third party asserts claims towards it for the violation of such rights.
- (2) If the delivered item violates a third party's industrial property right or copyright, then the Vendor shall, at its discretion and at its own cost, modify or replace the item in

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such a way that it no longer violates third-party rights but still continues to meet the contractually agreed functions or, alternatively, ensure that the Customer obtains the relevant right of use through the conclusion of a licence agreement.

If the Vendor fails to do so within a reasonable period of time, then the Customer shall be entitled to cancel the contract or effect a reasonable reduction of the purchase price.

Any damage claims presented by the Customer shall be subject to the limitations of clause 8 of these General Terms and Conditions of Delivery.

- (3) If products from other manufacturers are delivered by the Vendor and are in violation of legal provisions, the Vendor may, at its discretion, assert its claims towards the relevant manufacturers and sub-suppliers while charging the Customer, or, alternatively, assign those claims to the Customer. Warranty claims can only be asserted against the Vendor under the provisions of this clause 7 if legal assertion of the aforementioned claims has been unsuccessful towards the manufacturers and sub-suppliers or if legal assertion is pointless, e.g. due to insolvency.
- (4) If the Customer specifies how to manufacture the relevant items by providing the Vendor with specific details, documents and drawings, then the Customer warrants that contractual fulfilment shall not violate third-party patents, utility models or any other intellectual property rights or copyrights. The Customer shall, in particular, indemnify the Vendor against all third-party claims arising towards the Vendor from such a violation.
- (5) In the event of custom-made products, unless otherwise specified in a given contract, the Vendor reserves the right to retain the (intellectual) property of any documents and drawings created by the Vendor and of any tools made on that basis. This shall apply regardless of the party bearing the resulting costs.

Rights of use shall only be granted upon contractual agreement.

Clause 8: Liability for damages due to fault

- (1) Under the provision of this clause 8, the Vendor's liability for damages within its own culpability shall be limited, irrespective of the legal reason, particularly damage compensation for impossibility of performance, delay, defective or wrong delivery, contractual violation, neglect of duties in contractual negotiations or tort.
- (2) The Vendor shall not be liable for simple negligence perpetrated by one of its executive bodies, legal representatives, salaried employees or other vicarious agents, unless the case at hand is a violation of essential contractual duties. Essential contractual duties are the commitment to deliver and install the relevant items on time, to ensure that they are free from defects that would interfere more than negligibly with the operability of the item or with its suitability for use, as well as obligations to

provide advice, protection and due care, enabling the Customer to ensure the contractually compliant use of the item or intended to protect the lives and physical health of the Customer's workforce or to protect the Customer's property against substantial damage.

- (3) If, under clause 8.2, the Vendor is liable for damage compensation, such liability shall be limited to damages which, at the conclusion of the contract, the Vendor foresaw as possible consequences of a contractual violation or which it should have foreseen if it had applied appropriate due diligence. Moreover, any indirect or consequential damage resulting from defects in the delivered item shall only be eligible for compensation if such a defect can typically be expected under proper and appropriate use of the item.
- (4) In the event of liability for simple negligence the Vendor's duty to provide compensation for material damage and for any further resulting pecuniary loss shall be limited to EUR 5.0 million per claim even if a violation of essential contractual duties has been committed.
- (5) The aforementioned exclusions and limitations of liability are equally applicable to the Vendor's executive bodies, legal representatives, salaried employees and other vicarious agents.
- (6) In cases where technical information or advice is provided by the Vendor but does not form part of the contractually agreed scope of works and services owed by the Vendor, it is given free of charge and without accepting any liability whatsoever.
- (7) The limitations detailed in this clause 8 do not cover the Vendor's liability for wilful conduct, for guaranteed product or service characteristics, for violations of life, limb or health or for breaches of the German Product Liability Act (*Produkthaftungsgesetz*).
- (8) The Vendor shall not be held liable for faults or errors resulting from performance characteristics submitted by the Customer or from any other incorrect or incomplete details, including technical details.

Clause 9: Reservation of title

- (1) The reservation of title, detailed below, serves as an unlimited security for all the Vendor's existing current and future payment claims towards the Customer arising from the supply relationship between the parties (including outstanding balances arising from a current account relationship restricted to this supply relationship).
- (2) The goods delivered by the Vendor to the Customer shall remain the Vendor's property until all secured payment claims have been settled in full. The goods and any goods that are provided in replacement thereof under the terms detailed below and which are covered by the reservation of title shall hereinafter be referred to as "Reserved Goods".
- (3) The Customer undertakes to store Reserved Goods for the Vendor free of charge.

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- (4) The Customer is entitled to process and sell Reserved Goods until their utilisation (see clause 9) in the ordinary course of business. No permission is given for the pledging of those goods or for transfer of ownership as security lien.
- (5) If Reserved Goods are processed by the Customer, the parties agree that this shall take place on behalf and on account of the Vendor as the manufacturer and that the Vendor shall immediately acquire ownership or – if processing involves materials from several owners or if the value of a processed item exceeds the value of the Reserved Goods – that the Vendor shall immediately acquire co-ownership (i.e. part ownership) of the newly created items at the ratio between the Reserved Goods and the newly created item. In the event that no such ownership passes to the Vendor, the Customer hereby provides a security by way of anticipation whereby it transfers to the Vendor its future ownership of the Reserved Goods or, in the event of co-ownership, its future co-ownership share of the newly created item at the aforementioned ratio. If Reserved Goods are combined with other items into a single item or if they are inextricably mixed and if one of the other items must be seen as the main item and if the main item furthermore belongs to the Customer, then the Customer shall transfer to the Vendor the share of the co-owned single item at the ratio specified in subclause 1.
- (6) Anticipating a case where Reserved Goods are resold, the Customer hereby transfers to the Vendor, by way of security, the resulting claim towards the purchaser or, in the event of the Vendor's co-ownership in the Reserved Goods, the relevant co-ownership share. The same applies to any other claims in replacement of the Reserved Goods or otherwise arising in respect of the Reserved Goods, such as insurance claims or claims arising from unlawful acts in the event of loss or destruction. The Vendor hereby authorises the Customer until further notice to collect the claims transferred to the Vendor. The Vendor may only withdraw this collection authorisation in the event of enforcement.
- (7) If a third party gains access to Reserved Goods, particularly through a pledge, then the Customer shall immediately draw the attention of the third party to the Vendor's ownership and notify the Vendor, so that the latter can assert its rights of ownership. If the third party cannot reimburse the Vendor for judicial and extrajudicial costs arising in this context, then the Customer shall bear this liability towards the Vendor.
- (8) The Vendor shall release the Reserved Goods and any items or claims that have replaced those goods, provided that the goods value exceeds the secured claims by more than 50%. It shall be at the Vendor's discretion to select the items that are to be released under this provision.
- (9) If the Vendor cancels the contract in response to a contractual violation by the Customer, especially due to payment arrears (event of enforcement), then the Vendor shall be entitled to the Reserved Goods being returned.

Clause 10: Final provisions

- (1) If the Customer is a trader, a public-law entity or a separate estate under public law or if it has no general place of jurisdiction within the Federal Republic of Germany, then the place of jurisdiction for disputes arising from business relations between the Vendor and Customer shall be, upon specification by the Vendor, Wörth am Rhein. If, on the other hand, legal action is brought against the Vendor, then the exclusive place of jurisdiction for such cases shall be Landau in der Pfalz. This provision does not affect mandatory legal provisions concerning exclusive places of jurisdiction.
- (2) Relations between the Vendor and Customer shall be governed exclusively by the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) shall not be applicable.
- (3) Should the contract or these General Terms and Conditions of Delivery contain gaps, then they shall be closed by legally valid provisions which the parties would have agreed upon under the economic objectives of the contract and under the purpose of these General Terms and Conditions if they had been aware of the gaps.

Please note:

The Customer is aware that, under section 28 of the German Federal Data Protection Act (BDSG), the Vendor will store data arising from contractual relations and that the Vendor reserves the right to send such data to third parties (e.g. insurance companies) where this is required for the purpose of contractual fulfilment.

SKA Sitze GmbH, Am Oberwald 7, 76744 Wörth am Rhein, Germany, Landau Local Court (Amtsgericht Landau), entry in commercial register: HRB 21520