# Standard Sales Terms (May 2003)

Any contract placed with us (hereinafter referred to as "the Seller") by any private-law corporation, company or other business or any public-law legal person or other entity (hereinafter referred to as "the Buyer") shall exclusively be subject to these Standard Sales Terms and these Standard Sales Terms shall be applicable to any transaction agreed between the Seller and the Buyer thereafter even if no express reference to these Standard Sales Terms is made in connection with any such further transaction. The Seller hereby expressly refuses to accept any standard terms of the Buyer referred to in any correspondence or other document placing any such order. Notwithstanding any reference of the Buyer to any standard terms of the Buyer, the Buyer shall, upon the acceptance of any delivery by the Seller to the Buyer, be deemed to have accepted these Standard Sales Terms. No standard terms of the Buyer shall be applicable to any contract or order placed by the Buyer with the Seller unless such terms have been accepted expressly by the Seller in writing and the performance of any such contract or order by the Seller shall not be deemed to be an acceptance of any terms of the Buyer by the Seller.
Unless otherwise provided for in these Standard Sales Terms, the relationship between the Seller and the Buyer shall be governed by the provisions of applicable law.
If these Standard Sales Terms are otherwise inapplicable or ineffective for any reason whatsoever, the sale of any Goods delivered by the Seller to the Buyer ("the Goods") shall be subject to the reservations of Clause 6 in Article V hereinbelow.

## I. General Terms

1. Any bid or offer submitted by the Seller to the Buyer shall not be binding upon the Seller and unless otherwise expressly agreed upon by the Seller and the Buyer, no contract placed by the Buyer shall be effective unless expressly accepted by the Seller in writing.
2. The title to any sample, drawing or other document or information, whether reduced to writing or in electronic form, including but not limited to any copyrights or other rights associated there-with, which may be provided by the Seller to the Buyer shall remain vested in the Seller and no such sample, drawing or other document or information may be made accessible by the Buyer to any third party.
3. Any performance or other data or description of any Goods by the Seller in any brochure, price list, bid, proposal, offer or any other document which may form part of any such bid, proposal or offer shall be deemed to be approximate in accordance with standard industry practices and shall not be binding upon the Seller unless expressly accepted as binding by the Seller and the Seller does not make any warranties whatsoever with respect to any properties of any of the Goods.
4. Commercial terms agreed between the Seller and the Buyer shall be interpreted in accordance with Incoterms 2000.

## II. Price and Payment

1. Unless expressly otherwise agreed upon, any price agreed between the Seller and the Buyer shall be ex works exclusive of any packaging. Each such price shall be exclusive of any sales tax which shall be billed by the Seller in addition to said price at the rate which may be applicable at any time and from time to time.
2. If there is no other agreement, the payment has to be made within 14 days net.
3. The Buyer shall not have the right to retain any payment due to the Seller for any reason whatsoever and shall not deduct from any money due to the Seller any money owed or allegedly owed by the Seller to the Buyer unless any such counterclaim is undisputed by the Seller or has been awarded to the Buyer by a judgement from which no appeal can be taken.
4. If, during the period between the date on which any contract was awarded by the Buyer to or any order was placed by the Buyer with the Seller and the date on which production for the performance of said contract or order commences, any labor, material and/or production costs associated with said contract or order increase for any reason for which the Seller is not liable and the cost of any of the Goods (as defined in Section 255 of the German Commercial Code) as determined in accordance with generally accepted German accounting principles is shown by the Seller to have risen by more than twenty percent (20%) since the date of contract award or order placement, then the Seller shall have the right to redetermine the price of any such Goods payable by the Buyer under said contract or order provided however that the Seller shall not be entitled to increase said price by more than the increase in said cost.
5. The Buyer shall pay any amount owing to the Seller within seven (7) calendar days from the due date for the payment of said amount.

## III. Delivery Time and Late Delivery

1. The time available to the Seller for the delivery of the Goods ("Delivery Time") shall be as agreed between the Parties in the contract placed. The Seller shall not be obligated to deliver within said Delivery Time unless all technical and commercial details have been agreed upon order place-ment and the Buyer performs all of its obligations under said contract or order such as, without limitation, any obligation to obtain necessary certificates, approvals or permits from agencies or authorities and the obligation to make any advance payment provided that any non-satisfaction of any of the preceding conditions shall operate to increase the Delivery Time reasonably and further provided that no delay for which the Seller may be liable shall operate to increase the Delivery Time.
2. The Seller shall not be obligated to deliver any Goods within the Delivery Time unless the Seller receives deliveries from its suppliers as and when ordered by the Seller provided that the Seller shall notify the Buyer as soon as reasonably possible of any delay in delivery it may become aware of.
3. The Seller shall be deemed to have delivered within the Delivery Time if the Goods have left the Seller's works prior to the expiry of the Delivery Time or the Seller has notified the Buyer prior to the expiry of the Delivery Time that the Goods are ready for Delivery.
4. If the Buyer fails to make any payment to the Seller under any contract or order whatsoever when said payment is due, the Seller shall, upon notice to the Buyer, have the right to discontinue performance under the contract awarded or the order placed for the Goods until the payment the Buyer has failed to make when due has been received provided however that the Seller shall not have said right if the payment so due but not made is immaterial.
5. If the Seller is unable to deliver any Goods within the Delivery Time for reasons of force majeure, due to any labor dispute or due to any circumstances beyond the reasonable control of the Seller, then the Delivery Time shall be extended reasonably. The Seller shall notify the Buyer of the commencement and the end of any such circumstances as soon as may be reasonably possible.

## IV. Transfer of Risk and Acceptance

1. Unless expressly otherwise agreed upon between the Seller and the Buyer, the Goods shall be delivered ex works.
2. If the Goods to be delivered by Seller to the Buyer are divisible, then the Seller shall have the right to deliver and to invoice to the Buyer said Goods in reasonable parts and the Buyer shall not have the right to retain payment for any such reasonable part on the grounds of the non-delivery of any other parts of the Goods.
3. If any delivery by the Seller to the Buyer requires acceptance by the Buyer under any express provision of the order placed by the Buyer or at law, then any delivery by the Seller to the Buyer shall be deemed to have been accepted by the Buyer if and in as far as:
   – any Goods manufactured or processed by the Seller are, after delivery, sold to or allowed to be used by any third party or
   – any Goods manufactured or processed by the Seller are, after delivery, processed or mixed or combined with any other things with the agreement of the Buyer or
   – any Goods manufactured or processed by the Seller are, beyond trials or tests, used by the Buyer or by any third party with the agreement of the Buyer or
   – the Goods are accepted by any purchaser from the Buyer
   whatever may be earlier provided that any prior acceptance under the contract awarded or the order placed by the Buyer or at law shall take precedence over any acceptance under this Clause.

## V. Retention of Title

1. The title to all Goods delivered by the Seller to the Buyer shall remain vested in the Seller until the full payment of all accounts receivable by the Seller from the Buyer for any reason whatso ever provided that under current account arrangements the title so retained shall be deemed to be security for any balance owed to the Seller.
   The Buyer shall not dispose of any of the Goods the title to which is so vested in the Seller ("Title Reservation Goods") other than in the Buyer's ordinary course of business provided that the Buyer shall no longer have the right so to dispose of any Title Reservation Goods if and as soon as the Buyer fails to make payments when payments are due. The Buyer shall not have the right to pledge or to transfer by way of security the title to any Title Reservation Goods. The Buyer shall be obligated to maintain the rights of the Seller if the Title Reservation Goods are sold by the Buyer to any third party under credit arrangements. The Buyer shall promptly notify the Seller of any lien of attachment, execution or garnishment or any seizure or the like relating to any Title Reservation Goods.
   The Buyer hereby assigns to the Seller and the Seller hereby accepts the Buyer's assignment of any title to payment for any of the Goods resold by the Buyer to any purchaser and any security received by the Buyer from any such purchaser for any such payment provided however that the Buyer shall, subject to any notice to the contrary given by the Seller, have the right to collect any such payment and to enforce any such security at its cost. Upon the request of the Seller, the Buyer shall notify the Seller of the debtors against which titles to payment so assigned are held, the securities provided therefore, the type and the amount of the debt of each such debtor and the type and the amount of each such security and deliver to the Seller all documents which may be necessary to collect any amount so owed by any such debtor. Upon notice to the Buyer, the Seller shall have the right to notify any such debtor of the assignment of the title to payment by the Buyer to the Seller hereunder.
2. If the Goods are sold by the Buyer to any purchaser together with any other Goods the title to which is not vested in the Seller, then a share of the full title to payment of the Buyer under said sale to said purchaser equal to the price of said Goods agreed between the Buyer and the Seller shall be deemed to have been assigned by the Buyer to the Seller.
3. Upon the request of the Buyer, the Seller shall waive any title to Goods delivered by the Seller to the Buyer in as far as the value of all Goods the title to which has been retained by the Seller hereunder exceeds one hundred ten percent (110%) of the value of all titles to payment the Seller holds against the Buyer.
4. The Buyer shall, as of the transfer of risks associated with Title Reservation Goods, insure all Title Reservation Goods against any damage or loss or destruction as a result of any fire, inundation, flooding or theft or any destruction or loss or damage in transit provided that the Buyer shall notify the Seller promptly of any such destruction or loss or damage and shall, upon the request of the Seller, provide to the Seller any documentation of any such loss or damage such as, without limitation, any expert report on said destruction or loss or damage, the names of the insurers of said Goods and, as requested by the Seller, the insurance policy or policies relating to the Title Reservation Goods or insurance certificates issued by the insurer or the insurers for the Title Reservation Goods. The Buyer hereby assigns to the Seller, conditionally as of the time of any such destruction or loss of or damage to any Goods, any title against any insurer or any party liable for any such destruction or loss or damage to a maximum amount equal to the price agreed for any such Goods affected by any such destruction or loss or damage by way of security for all moneys owed by the Buyer to the Seller.
5. Any processing of any Title Reservation Goods by the Buyer shall be for the Seller and the Seller shall be deemed to be the processor for the purposes of Section 950 of the German Civil Code.
   If Title Reservation Goods are processed, combined or mixed with other Goods the title to which is not vested in the Seller, then a fraction of the title to the new product equal to the ratio between the price invoiced to the Buyer for the Goods so processed, combined or mixed and the sum of the price invoiced to the Buyer for the Goods so processed, combined or mixed and the price or prices invoiced to the Buyer for the other Goods so processed, combined or mixed shall be vested in the Seller. The Buyer shall be the custodian of any such new product the title to which is vested in the Seller in total or in part for the Seller.
   If any such Title Reservation Goods are processed, combined or mixed with Goods of the Buyer and the Goods of the Buyer are the main constituents of the new product thereby created, then the Buyer shall be deemed to have transferred to the Seller a fraction of the title to any such new product computed in accordance with the principles of the preceding sentence and shall be the custodian of said new product for the Seller.
   The provisions of Clauses 1 through 4 hereinabove applicable to Title Reservation Goods shall apply mutatis mutandis to any new product obtained by processing, combination or mixing in which the Seller acquires in total or in part a title through the operation of this Clause.
6. If these Standard Sales Terms have not been agreed effectively, any transfer of title to any of the Goods shall be subject to the Seller receiving the full price agreed between the Seller and the Buyer therefore.

## VI. Defects

1. General
   1.1 If Section 377 or Sections 377 and 381 of the German Commercial Code (sales and contract manufacture agreements between business organizations as defined in Section 1 et seq. of the German Commercial Code) are applicable to the order placed, the Buyer shall notify the Seller promptly of any patent defect in any of the Goods provided that said notice shall be given no later than on the fourth (4th) working day following the delivery of said Goods. Any latent defect in any of said Goods shall be notified promptly by the Buyer to the Seller provided that said notice shall be given no later than on the fourth (4th) working day following the discovery of said defect. Each such notice of any defect in any of the Goods shall be in writing. The conditions applicable to any such notice and the effects of a late notice of any defect in any of the Goods shall furthermore be governed by the conditions of law (Sections 377, respectively 377 and 381 of the German Commercial Code).

*(Continues overleaf)*

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1.2 If the Buyer is not a business organization, notice of any patent defect in any of the Goods delivered by the Seller to the Buyer shall be given by the Buyer to the Seller within two (2) weeks following the delivery of said Goods in the case of sales and contract manufacture agreements and within two (2) weeks following acceptance in the case of service agreements. The term provided for hereinbefore shall be deemed to have been complied with if said notice is forwarded by the Buyer within said term and received by the Seller within four (4) weeks from such delivery or acceptance as the case may be. The Buyer shall not be entitled to any remedy for any patent defect in any of the Goods if the Buyer fails to give notice as aforesaid unless and in as far as
– the Seller is liable for said defect due to willful act, neglect or omission, any act of bad faith or any gross negligence,
– said defect is covered by a warranty of the Seller in accordance with Section 443 of the German Civil Code or
– said defect is claimed in connection with loss of human life, injury, impairment of health or loss of freedom provided that any liability of the Seller for any such defect shall be excluded in accordance with the provisions of law such as but not limited to the provisions of Section 640, paragraph 2, or Section 442 of the German Civil Code if the Buyer had known said defect or did not know said defect due to its own gross negligence.

2. Product Defects
2.1 If any of the Goods delivered by the Seller to the Buyer is defective, the Seller shall remedy said defect by repair or replacement. If said remedial action fails, then, subject to the provisions on damages in Article VII hereinbelow, the Buyer shall be entitled to any of the remedies provided for by law.
2.2 If any remedial action is taken by the Seller, then the Seller shall bear all costs and expenses occasioned by the removal of said defect such as, without limitation, any transportation or traveling expenses or any labor or material costs provided however that any extra costs occasioned by the Buyer moving the Goods after delivery to a place other than the registered premises of the Buyer shall be carried by the Buyer unless the removal of said Goods is a use for which the Goods are intended.
2.3 The Buyer shall give the Seller the time and the opportunity which may be needed to remove any defect in any of the Goods provided that the Seller shall not be held liable for any consequences of not being given such time and opportunity.
2.4 Any repair or replacement by the Seller with respect to any Goods shall irrespective of the scope of any such repair or replacement not be deemed to be an acceptance of any liability for any defect in any of the Goods claimed by the Buyer provided that no persons other than legal representatives or procurators under Sect. 49 German Commercial Code ("Prokuristen") of the Seller shall have the right to accept any liability for any defect on behalf of the Seller.
2.5 If any defect in any of the Goods claimed by the Buyer shows not to be a defect for which the Seller is liable, then the Buyer shall reimburse to the Seller all costs reasonably incurred by the Seller to remove said alleged defect in good faith provided that material and labor costs so incurred by the Seller shall be reimbursed at the Seller's standard rates applicable at the time when the alleged defect was so removed.
2.6 The Buyer shall not be entitled to the removal by the Seller of any defect due to any of the following:
– improper use of any Goods or use of any Goods for a purpose for which the Goods are not fit or defective installation or commissioning of the Goods by the Buyer or any third party
– natural wear and tear, improper or negligent handling, improper maintenance or use of any unfit consumables or utilities
– defective construction work, unsuitable foundations or chemical, electrochemical or electrical interference unless caused by the Seller.
2.7 The Seller shall not be held liable for the consequences of any improper or inappropriate removal of any defect in any of the Goods by the Buyer or any third party or any modification to any of the Goods made without the Seller's prior consent.

3. Legal Defects
3.1 The liability of the Seller for the Goods not to be in breach of any third-party industrial property rights or copyrights shall be limited to the Federal Republic of Germany and the country in which the Buyer is registered. The Seller shall have no such liability for any other country, such as any country to which the Goods may be moved by the Buyer, unless such other country has been notified by the Buyer to the Seller prior to awarding the contract or placing the order for the Goods.
3.2 If the use of the Goods delivered by the Seller to the Buyer is in breach of any third-party industrial property rights or copyrights and the Seller is liable for said breach according to Clause 3.1 hereinabove, the Seller shall, at its cost, obtain for the Buyer the right to continue the use of said Goods or modify said Goods in a manner reasonably acceptable to the Buyer so that said Goods will no longer be in breach of any such industrial property rights or copyrights. If such rights cannot be obtained at reasonable commercial terms or within a reasonable period of time and if the Goods cannot be so modified, then the Buyer shall have the right, at its discretion, to rescind the contract awarded by the Buyer to the Seller or the order placed by the Buyer with the Seller or to obtain from the Seller a reasonable reduction in the price of said Goods.
The Seller shall in any such event further indemnify the Buyer against any undisputed claims or any claims determined by non-appealable court decision of the owners of such industrial property rights or copyrights.
3.3 Subject to Clause 3.4 hereinbelow, the Buyer shall not have the rights under Clause 3.2 hereinabove, unless
– the Buyer notifies the Seller promptly of any breach of industrial property rights or copyrights claimed by any third party,
– the Buyer reasonably supports the defense of any such claims by the Seller and allows the Seller to make modifications as referred to in Clause 3.2 hereinabove,
– the Buyer allows the Seller to defend at its own cost any such claim or to make any out-of-court settlement with respect to any such claim as the Seller may think fit,
– the legal defect is not due to any instructions given by the Buyer to the Seller and
– the legal defect is not due to any modification of the Goods by the Buyer or any use of the Goods not in conformity with the intended use.
3.4 Notwithstanding the limitations in Clauses 3.2 and 3.3 hereinabove, the provisions laid down by law shall apply, if and in as far as
– the title of the Buyer against the Seller is held under Section 478 or under Sections 651 and 478 of the German Civil Code,
– the Seller is liable for the breach of the industrial property rights or the copyrights due to any willful act, neglect or omission or any gross negligence on the part of the Seller,
– the Seller warranted (as provided for in Section 443 of the German Civil Code) that the Goods will not violate any industrial property rights or copyrights or
– any damages claimed as a result of any breach of any industrial property rights or copy rights are on the grounds of any loss of life, injury, loss of health or loss of freedom.

4. Warranties Under Section 443 of the German Civil Code
No person other than a legal representative or a procurator under Sect. 49 German Commercial Code ("Prokuristen") of the Seller will have the right to agree any warranties according to Section 443 of the German Civil Code.

**VII. Liability and Damages**

1. The Seller shall be liable for any willful acts, neglects and omissions and any gross negligence of its legal representatives and/or any other persons authorized by the Seller to perform any of the obligations of the Seller under any contract awarded to the Seller or order placed with the Seller ("Agent or Employee").
2. In the event of any ordinary negligence of any legal representative, Agent or Employee of the Seller, the liability of the Seller shall be limited to liability for any loss or damage the Seller foresaw when the contract was awarded or the order was placed by the Buyer or should have foreseen when the contract was awarded or the order was placed by the Buyer considering the circumstances the Seller knew or should have known when the contract was awarded or the order was placed by the Buyer. If and in as far as any loss or damage suffered by the Buyer due to the ordinary negligence of any legal representative, Agent or Employee of the Seller is compensated by any final payment by any insurer under any insurance contract against loss or indemnity concluded by the Buyer or for the Buyer such as, but not limited to any liability, all-risks, transportation, fire or business interruption insurance, the liability of the Seller shall be limited to any losses incurred by the Buyer as a result of any such insurance claim such as, without limitation, any increase in insurance premium. Any liability of the Seller for any loss or damage caused by the ordinary negligence of any of the legal representatives, Agents or Employees of the Seller and covered by a final insurance payment to the Buyer shall be excluded. Subject to the limitations provided for hereinbefore, any liability of the Seller for any loss or damage caused by the ordinary negligence of any legal representative, Agent or Employee of the Seller shall for each incident be limited to an amount of one million Euro (1,000,000 €).
3. The exclusions and limitations of liability provided for hereinabove shall not apply,
– if and in as far as the Seller is held liable for any human loss of life, injury or loss of health,
– if and in as far as the Seller is held liable under the German Product Liability Act or
– if and in as far as the Seller is held liable under any warranty in accordance with Section 443 of the German Civil Code agreed by the Seller to provide security to the Buyer with respect to the loss or damage incurred by the Buyer.
4. The provisions of Clauses 1 through 3 hereinabove shall not operate to alter any of the provisions of law regarding the onus probandi.

**VIII. Limitation**

1. The period of limitation with respect to any defect shall be a period of one (1) year provided that said period shall be five (5) years for any defect in any Goods serving as civil engineering structure or structures or any defect in any civil engineering structure caused by any Goods ordinarily used in civil engineering structures.
2. The period of limitation with respect to any other cause under the contract awarded or the order placed by the Buyer or any other cause outside said contract or order shall be a period of eighteen (18) months.
3. Notwithstanding the provisions of Clauses 1 and 2 hereinabove, the periods of limitation allowed by law shall apply, if and in as far as
– the title held by the Buyer against the Seller is under Section 478 or Sections 651 and 478 of the German Civil Code,
– the title of the Buyer is held on the grounds of any willful act, neglect or omission, any act of bad faith or any gross negligence on the part of any of the legal representatives, Agents or Employees of the Seller,
– the title held by the Buyer against the Seller is on the grounds of any loss of life, injury, loss of health or loss of freedom of any person,
– the title held by the Buyer against the Seller is under the German Product Liability Act,
– the title held is on the grounds of a third party title in rem which grants any such third party a title to the surrender of the Goods (Sect. 438 para.1 subsubpara. a German Civil Code) or
– the title held is on the grounds of any title recorded in any register of deeds (Sect. 438 para.1 subpara. b German Civil Code).
The provisions in Clauses 1 and 2 shall further not apply if the title is held by the Buyer under a warranty of the Seller in accordance with Section 443 of the German Civil Code provided that any such title shall exclusively be subject to the provisions of Clause 4 hereinbelow.
4. The period of limitation applicable to any warranty of the Seller in accordance with Section 443 of the German Civil Code shall commence upon the delivery of the Goods to the Buyer or, if acceptance by the Buyer is required by law, upon the acceptance of the Goods by the Buyer provided that, in the event of bad faith, said period shall commence as provided for in Section 438, paragraph 3, of the German Civil Code. Said period shall terminate as provided for in Section 438 of the German Civil Code unless a shorter period has been agreed according to the terms of the warranty under Section 443 of the German Civil Code.
5. Clauses 1 through 4 hereinabove shall not operate to alter any of the provisions of Sections 196, 197 and 479 of the German Civil Code or any of the provisions of law applicable to the onus probandi.

**IX. Software Use**

If the contract awarded by the Buyer to the Seller or the order placed by the Buyer with the Seller provides for the supply of software, the Buyer will be granted a non-exclusive right to use said software and any documentation of said software. Said software will be supplied by the Seller to the Buyer for use with the Goods delivered by the Seller to the Buyer provided that the Buyer shall not have the right to use said software on more than one system.
Any copying, modification or translation of said software or any conversion of the object code of said software into source code shall be limited as provided for in Section 69 et seq. of the German Copyright Act. The Buyer agrees not to remove from said software any reference to the developer of said software such as, without limitation, any copyright reference and not to modify any such reference unless the prior express content of the Seller has been obtained.
Any other rights associated with such software and any documentation of said software and any copies thereof shall remain vested in the Seller or the supplier of said software as the case may be. The Buyer shall not grant any sublicense.

**X. Applicable Law and Jurisdiction**

1. The relationship between the Seller and the Buyer shall exclusively be governed by the law of the Federal Republic of Germany as the same may be applicable to the relationship between two German parties provided however that the application of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 shall be excluded.
2. If the Buyer is a business or any public-law legal person or other entity, any dispute between the Seller and the Buyer shall be settled by the courts having jurisdiction at the registered offices of the Seller provided however that the Seller shall have the right to bring action against the Buyer in the courts having jurisdiction at the registered offices of the Buyer.

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