

## GENERAL CONDITIONS OF SALES

(Edition January 2012)

### 1. Sphere of Application

Principally these General Conditions of Sales (hereinafter referred to as „GCS“) apply to all deliveries, services and offers of UNICAN GmbH, An der Obererft 18, D41464 Neuss, Germany (hereinafter referred to as "Seller"), provided that they have not been modified or excluded expressly and in writing. All deviating conditions are rejected and shall not form part of any contract, even if the Seller does not declare his rejection expressly and in writing.

### 2. Conclusion of the Contract, Prices, Packing and Packing Costs, Dispatchment, Transport Insurance

#### 2.1 Conclusion of the Contract

Any offers of the Seller are without obligation. The written contract is closed, if the Seller has fixed a time for acceptance in its written and firm offer, the contract shall be deemed to be concluded, when the Buyer before expiration of such period has dispatched a written acceptance, as long as such acceptance reaches the Seller at least within 3 days after the fixed expiration date. The contractual content is defined by the technical specification of the Seller.

#### 2.2 Prices

All prices are for delivery Ex Works of the Seller (Incoterms in current valid edition), packing costs and German Value Added Tax excluded (refer to 2.3 and 3.1). Buyers from inside the European Union have to indicate their VATIdent.- No. at the formation of the contract. Buyers (receivers) from outside the European Union are not charged with VAT.

#### 2.3 Packing

Unless otherwise agreed packing shall be at the discretion of the Seller and shall be charged. The Buyer is obliged to dispose of all packing materials.

#### 2.4 Shipping

The goods are dispatched on charge and at the risk of the Buyer. Transport insurance shall be provided by the Buyer.

#### 2.5 Commissioning

Mounting and installation of the delivered appliances and auxiliary equipment is the Buyer's obligation. If the Seller in case of an additional express agreement is obliged for mounting or installation and/or to put the appliance into operation, his General Conditions of Mounting and Installation are applicable.

### 3. Delivery, Passing of Risk, Declaration

Unless otherwise agreed in writing, all deliveries will be effected exclusively Ex Works of the Seller in Germany (refer to no. 2.3). Any agreed deviating trade terms shall be interpreted according to the Incoterms of the International Chamber of Commerce, Paris. Partial deliveries are permitted.

### 4. Time for Delivery, Delay, Cancellation of the Contract

#### 4.1 Time of Delivery

Any dates of delivery are without obligation and only binding if agreed expressly and in writing. The period of time for delivery begins to run with dispatchment of the sales confirmation, but neither prior to the production of all documents, licences, permits and further formalities which are required of the Buyer, nor before receipt of the agreed advance payments.

#### 4.2 Delay

If the Seller is responsible for delay of delivery, the Buyer, after 3 weeks of delay - excluding other claims - is entitled to liquidated damages – if he substantiates that he has incurred damages – for each further full week of delay, payable at a rate of 0,5 % - but not exceeding 5 % in total - calculated on the value of that part of delivery which, as a consequence of the delay, cannot be used as intended. No. 7.5 applies accordingly.

#### 4.3 Termination

If the maximum liquidated damages according to no. 4.2 are reached, the Buyer - after he has fixed an additional reasonable period combined with the announcement that acceptance of delivery will be refused - may notify the Seller in writing of the termination of the contract in respect of that part of the goods which are delayed, except where the Seller delivers prior to termination.

#### 4.4 Extended Time of Delivery

If the Buyer is in delay with an essential contractual obligation, the Seller is entitled to extend the period of time for delivery according to the period of delay. No. 5 applies analogously.

### 5. Acceptance of Delivery

The Buyer bears all costs of storage, insurance, protection measures etc., arising from any delayed acceptance. Without further proof the Buyer must pay per week of delay liquidated damages of at least 0,5 % of the order value, but not exceeding 5 %. The Seller may demand, by notice in writing, the Buyer to accept delivery within an additional period of time if the Buyer has not accepted delivery at the fixed time of delivery. Nevertheless, this does not affect the Seller's claim to the purchase price. After expiration of the additional period the Seller is entitled to terminate the contract in whole or partly by notice in writing and claim damages.

### 6. Payment

Unless otherwise agreed, all payments must be effected by advance payment or by irrevocable and confirmed letter of credit (or bank guarantee, bond) at least six (6) weeks prior to the date of delivery. The "Uniform Customs and Practices for Documentary Credits" of the International Chamber of Commerce, Paris, are applicable. All payments shall be effected in EURO without regard to any deviations of the currency exchange rate and without any reduction or discount "free pay office" of the Seller. In case of late payment, the Seller is

entitled to interest from the date on which payment was due. The rate of interest shall be 8 % p.a. above the prime bank rate of the European Central Bank. The Seller in so far may suspend performance of the contract. If the Buyer has not paid the agreed amount within a reasonable additional period not to exceed 1 month after the payment was due, the Seller shall be entitled to terminate the contract by notice in writing and claim compensation for any loss it has incurred.

#### **6.1 Creditworthiness, delay in payment**

If any particular circumstances create considerable doubts regarding the Buyer's creditworthiness, all claims resulting from the whole business relationship shall become due immediately. The Seller is entitled to demand delivery against advance payment. Sentence 1 applies accordingly regarding Seller's delay in payment for any contract. If payment in instalments is agreed and the Buyer delays more than 10 % of the owed purchase price, the entire purchase price shall become due immediately. The Seller is entitled to demand advance payment of two thirds of the purchase price regarding customer specific products (special models or orders) or variations of those, payable 3 weeks prior to start of production at the latest.

### **7. Liability for Conformity of the Goods**

#### **7.1 Duty of examination and notification**

After acceptance, the Buyer must examine the goods without delay. Therefore he must observe the recognized industry standards. In any case, the Buyer loses the right to rely on a lack of conformity of the goods if it does not give notice to the Seller, exactly specifying the nature of the lack of conformity, as soon as he has discovered it or ought to have discovered it. After arrangement with the Seller the Buyer is responsible for the securing of all proofs.

#### **7.2 Handling and storage**

The proof of careful treatment and regular and dry storage of the goods devolves on the Buyer.

#### **7.3 Remedy of defects, substitutional delivery**

If the goods do not conform to the contract, the Seller may remedy the lack of conformity at first and at its own discretion within four weeks after the Buyer's request and, even if the defects are substantial, by repair or substitutional delivery. Any repairs must be effected at the place of business of the receiver agreed in the contract. If such receiver's place differs from the Buyer's place of business, this must be disclosed to the Seller. Otherwise the latter shall not bear any thus increased costs. The Buyer - on reasonable demand and according to the directions of the Seller is obliged to participate in any repair works against reimbursement of his expenses.

#### **7.4 Pro rata reduction, termination of the contract**

If the Seller fails to remedy the lack of conformity according to no. 7.3 by repair or replacement, the Buyer is entitled to a reasonable pro rata reduction of the purchase price. If the lack of conformity is fundamental, the Buyer may fix a final period for fulfilment and after fruitless expiration of such final period demand termination of the contract.

#### **7.5 Exclusion of further claims for damages caused by defects**

Save as stipulated in nos. 4.2, 4.3 and 7.1 through 7.4, 9. and 10. the Seller shall – without regard to the legal reasons – not be liable for any lack of conformity and damages. This applies to any damages caused by the defect, including losses of production, profit or other indirect losses (losses and damages not incurred in the delivered goods themselves). In case of responsibility for a fundamental breach of contract the Seller is liable, also in case of gross negligence, but only for typical contractual losses which could have been reasonably foreseen. The Seller in any case is liable, however, for gross negligence, for particularly rendered guarantees, fraud, culpable caused damages to life, body or health or if there is liability regarding physical injuries or damages to private items under German or foreign product liability laws.

#### **7.6 Deviations customary in trade, changes in construction**

Deviations, which are customary in trade, regarding quantities, measures, quality, weights etc. are permitted. Equivalent changes in construction are reserved.

#### **7.7 Observation of Seller's instructions**

Instructions of the Seller about the further manufacturing or application of the goods must be observed by the Buyer, otherwise claims based on defects are not acknowledged.

#### **7.8 Electromechanical area**

All supplies and services for the electromechanical area are rendered according to the safety provisions of the Association of German Electrical Engineers (VDE). No. 7.6 sentence 2 applies analogously.

### **8. Tools, Plans, Sales materials, Secrecy**

#### **8.1 Tools**

One year after performance of the last order any tools built for special (customer specific) parts are at the Seller's disposal. This also applies regarding tool parts which have been charged to the Buyer.

#### **8.2 Rights**

All rights regarding Seller's drawings, drafts and plans, especially patent-, copy- and invention rights shall remain property of the Seller. All sales materials such as catalogues, sample books, price lists etc. which have been placed at the Buyer's disposal, remain property of the Seller and shall be returned to the Seller on demand.

#### **8.3 Offers**

Any documents pertaining to an offer, such as pictures, drawings, weights, measures, capacities or data on further qualities and other information about the contractual products and services, are only binding approximately. All proprietary and copyrights regarding information of the Seller – also in electronic form – remain with the latter.

#### **8.4 Confidentiality**

The contractual parties agree to keep secret all commercial and technical details of their mutual business – as long as not in the public domain. This also applies to the items mentioned in nos. 8.2 and 8.3, which also shall not be disclosed or made available to any third party. The contractual parties shall also ensure that their subcontractors will be under the same confidentiality obligation as set out in no. 8.4.

#### **9. Liability for subsidiary Duties**

The Seller is only liable for the contractual or pre-contractual subsidiary duties according to the provisions of nos. 4, 7.5 and no. 11.

#### **10. Non-Performance, Impossibility, Unability**

As far as the Seller is unable to deliver in whole or partially, the Buyer may terminate the contract by notice in writing to the Seller in respect of that part which is not delivered, save where acceptance of partial performance should be an unreasonable demand. Nos. 7.5 and 13 apply accordingly.

#### **11. Act of God**

Each party shall not be liable for non-performance, if performance is prevented by circumstances beyond the party's control or especially by one of the following circumstances: fire, natural disasters, war, seizure, requisition, prohibition of export, embargo or other authority measures, general shortage of materials, restrictions in the use of power, industrial disputes or if a breach of contract of subcontractors is caused by any such circumstances.

#### **11.1 Termination**

Each party may, by notice in writing, terminate the contract if performance is being prevented for more than 6 months according to No. 11..

#### **12. Further Responsibility of the Seller**

Save as expressly stipulated in this GCS, all further contractual or legal claims against the Seller are excluded, especially claims for termination of the contract, price reduction or damages of any kind, including such damages which have not incurred in the subject of delivery itself. No. 7.5 sentence 3 and 4 apply accordingly.

#### **13. Term of Limitation**

All claims of the Buyer based on a lack of conformity with the contract shall be superannuated within 12 months from the passing of risk (no. 3). The Seller's liability is limited to any lack of conformity, which appears within this period. This does not affect the lawful superannuation in regard of intentional or malicious conduct or legal claims according to product liability laws or because of installation of the delivered products into buildings.

#### **14. Retention of Title and Ownership**

##### **14.1 Property**

All delivered goods remain property of the Seller until all his purchase price claims resulting from the whole business relationship are fully paid for, as far as such retention of ownership is valid under the applicable law. If the validity of the retention of ownership is subject to special conditions or regulations in the country of destination, the Buyer is responsible for the observation and compliance with those conditions or regulations. He shall inform the Seller thereof. Any bills of exchange or cheques are only deemed to be fulfilment with receipt of the entire payment.

##### **14.2 Protection**

The Buyer shall assist the Seller in taking any measures necessary to protect the Seller's ownership and title to the product in the country concerned. The Buyer shall inform the Seller immediately if any dangers regarding the property of the Seller should occur. This applies especially to disposals of third parties or authority measures.

##### **14.3 Taking back Goods**

The Seller – after a reminder – is entitled to take back any goods delivered under retention of title after fruitless expiration of a reasonable additional period noticed to the Buyer, if the Buyer does not fulfil his contractual obligations, especially if payment is delayed. The Seller is not obliged to fix an additional period if there are legal exceptions.

##### **14.4 Insurance**

The Buyer shall insure the delivered goods at his costs against theft, fire, water damages and other risks for the time until full payment is effected.

##### **14.5 Securities**

If the value of all securities exceeds the value of all secured claims by more than 10 % the Seller shall, upon request, give up securities at his discretion.

#### **15. Miscellaneous**

##### **15.1 Rights and Duties**

All rights and duties of either party are not assignable, except assignments of purchase price claims to banks of the Seller.

##### **15.2 Modifications and amendments**

Modifications, amendments or further subsidiary agreements to this GCS are required in written form.

##### **15.3 Validation**

Any contract concluded under this GCS shall remain valid although single conditions should be or become invalid.

**15.4 Claims**

The Buyer only is entitled to set-off claims or to suspend contractual performance regarding claims which have been acknowledged or awarded by the courts.

**15.5 Trade marks, trade names, marketing, industrial property of the Seller**

Trade marks, trade names, marketing, industrial property of the Seller Only with the prior written consent and only in the interest of the Seller the Buyer is allowed to make use of or to have registered any trademarks, trade names or other signs of the Seller.

**15.6 Industrial property of third parties**

The Buyer is responsible that industrial property rights of third parties are not infringed due to its directions regarding forms, measures, colours, weights etc. The Buyer shall indemnify the Seller, including all costs and expenses occurring before and outside the courts and assist the Seller on its demand in any litigation against claims of third parties based on infringement of the aforesaid industrial property rights.

**16. Compliance with Law**

The Seller is responsible for the compliance with the relevant German regulations, which are decisive unless otherwise agreed and as far as products made in Germany are exported. The observation and implementation of the relevant foreign trade law (e.g. import or foreign exchange licences etc.) and further laws outside Germany is the Buyer's obligation.

**17. Place of Performance, Court of Jurisdiction, Applicable Law****17.1 Place of performance**

Place of performance is the works of the Seller.

**17.2 Place of Arbitration**

All disputes arising out of or in connection with contracts under these GCS are finally settled at the place of the Seller's head-office, without recourse to the courts, in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce, Paris, by one or more arbitrators designated in conformity with the said Rules. Place of arbitration is D-41464 Neuss, Germany.

**17.3 Disputes**

Instead the arbitration court provided for in No. 17.2 the competent state courts of the Seller's head office shall make final and binding decisions, regarding disputes with Buyers from one of the European Union member states or the European Free Trade Association (EFTA, particularly Iceland, Liechtenstein, Norway and Switzerland) or from Poland.

**17.4 Other State courts**

The Seller in any case is entitled to invoke the state courts at the place of business of the Buyer. In so far the competence of Nos. 17.2 and 17.3 will become obsolete.

**17.5 International Conventions**

All contracts concluded under this GCE shall be subject to the United Nations Convention on Contracts for the International Sale of Goods (CISG) from 11.04.1980. Subsidiary substantive and procedural law shall be that in force at the Seller's place of business.

**18. Data Processing, prior Conditions of Sales**

The Seller and its affiliates are entitled to store and process any data in connection with business affairs in compliance with the German laws.

**19. All prior General Conditions of Export are obsolete.**