

**General Conditions of Sale and Delivery**  
**Hebmüller SRS Technik GmbH and Hebmüller Trading GmbH**

**§ 1 Scope of application**

1. The following terms and conditions of sale and delivery apply to all sales and delivery contracts concluded between the buyer and us **now and** also in the future. They shall also apply to all future business relations with the buyer, even if they are not expressly agreed on again, insofar as the buyer is an entrepreneur, a legal person under public law or a public special fund.
2. Deviating General Conditions of the buyer, which a member of our management has not expressly acknowledged **in writing** or agreed in writing, shall not be acknowledged by us, even if we do not expressly contradict them. Even if we refer to a letter containing or referring to the terms and conditions of business of the buyer or a third party, this does not imply any acceptance of the terms of the business. The following terms and conditions of sale and delivery shall also apply if we carry out the purchaser's order without reservation in the knowledge of contrary or deviating conditions of the buyer.
3. Deviations from our business and delivery terms shall only be effective if a member of our management has expressly acknowledged them in writing or confirmed them in writing; this also applies to the suspension of the written form requirement.
4. All agreements made between us and the purchaser with regard to the execution of the contract require the written consent of a member of our management to be effective.

**§ 2 Offer and acceptance**

1. Unless we have expressly designated them in writing as binding, or if they do not contain a binding acceptance period, our offers are always non-committal, this also applies to re-orders due to previous offers, price lists as well as circulars and similar advertising material. The contract is only concluded once a member of our management has confirmed the acceptance of the order in writing or the delivery has been carried out. For the scope of the delivery, our written order confirmation is decisive. In the case of an offer with timely binding and acceptance in due time, the offer is decisive, unless a timely order confirmation is present. We reserve the right to correct errors in offers, order confirmations and invoices. Supplementary agreements and amendments are only effective if a member of our management expressly acknowledges or confirms them in writing.
2. The information, illustrations, drawings, samples, brochures, technical data and catalogues and other technical data contained in brochures, catalogues, advertisements and price lists as well as in the documents accompanying the offer are not binding unless the usability for the intended purpose requires an accurate agreement. They are merely intended for purposes of description and are intended to convey only a reasonable idea of the goods described therein. The above-mentioned information will become a contractual element only if and insofar as they have been expressly confirmed by a member of our management as binding. If they are attached or assumed and confirmed in our offers / order confirmations, these are only approximately binding,

subject to the actual sizes and conditions to be communicated by the buyer.

3. We reserve the right to property or copyright in all offers and estimates made by us as well as drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and tools provided to the buyer. The purchaser is not allowed to make these objects available, as such or in content, to third parties, to make them known, to use them himself or by third parties or to reproduce them without our express consent. At our request, he has to return these items to us completely and destroy any copies which are produced if they are no longer required by him in the normal course of business or if negotiations do not lead to the conclusion of a contract. Except from this is the storage of electronically provided data for the purpose of usual data protection.
4. We are entitled to make changes to the model, the design, the materials, or the removal of the goods or parts of our services.
5. We reserve the right to make changes and improvements in construction and model, which are reasonable for the buyer or which are necessary due to technical, legal or official requirements, as well as deviations in quality, model and colour which are customary in trade or due to the material. Unless customary changes in design and shape are permitted, unless the change or deviation is not reasonable for the buyer in individual cases.
6. Written communications by us shall be deemed to have been received by the purchaser after the usual mail run, if they have been sent to the address, fax number or e-mail address of the customer which we have received last. Exceptions to the presumption of reception are declarations of particular importance, in particular cancellations, withdrawal declarations and postponements.

**§ 3 Price and payment**

1. The prices apply to the performance and scope of delivery stated in the order confirmations. Multiple or special services are charged separately. The prices are in Euro ex works plus packaging, the applicable value-added tax, in cases of export custom duties, as well as fees and other public charges.
2. If the agreed prices are based on our list prices and the delivery is to be effected only four months after conclusion of the contract, our list prices valid at delivery (respectively less an agreed percentage or fixed discount) shall apply.
3. All invoices shall be payable immediately (due date) without deduction, unless otherwise agreed. The date on which payment is received is the receipt in our business account. From 30 days after the due date, we charge default interest at the rate of 9 percentage points above the respective base rate of the European Central Bank. We reserve the right to prove and enforce an additional interest margin.
4. Payment instructions and checks will only be accepted after special written agreement and only on account of performance. Checks are credited, subject to their receipt, with the value date of the day on which we can finally dispose of the equivalent value. All costs resulting from this shall be borne by the Purchaser.
5. In the event of a default of the buyer in the payment of an instalment agreed, we can declare the entire principal sum which is by then unpaid as immediately due and

payable. If the buyer is in default with the payment, we can declare withdrawal from the contract and demand damages after the expiry of an appropriately set deadline. The purchaser's right to determine which claims are satisfied by his payments shall be waived in favour of the statutory redemption provisions of § 366 (2) BGB (German Civil Code).

**6.** We are entitled to carry out or deliver outstanding deliveries or services only against prepayment or security, if, after conclusion of the contract, we become aware of circumstances which considerably reduce the creditworthiness of the Purchaser and which might prevent the payment of our outstanding claims from the respective contractual relationship (including from other individual contracts for which the same framework agreement applies) with the customer.

#### **§ 4 Offsetting**

Counterclaims, which we have against the buyer, can only be offset or made subject to a right of retention if the counterclaim of the buyer is legally established, undisputed or acknowledged by us.

#### **§ 5 Retention of title**

**1.** The delivered goods remain our property until the payment in full of all claims from the business relationship with the buyer (including costs of the documentation) in main and secondary matters. In the case of current invoices, the retention of title shall be considered as collateral for our balances.

**2.** The goods subject to retention of title may neither be pledged to third parties nor transferred as security prior to the payment in full of the secured claims. The buyer is obliged to inform us immediately in writing if an application for opening insolvency proceedings is filed.

**3.** In the case of access by third parties to the goods subject to retention of title or to the claims or other collateral assigned to us, in particular in the context of foreclosure, the buyer shall notify third parties of our property and immediately inform us in writing of the impending, imminent or already occurring access of third parties and deliver to us the documents necessary for an intervention. This also applies to any other kind of damage. If the third party is not able to compensate us for the legal or extra-judicial costs for the assertion of our rights, the buyer is liable for the incurred costs.

**4.** The purchaser is revocably entitled to process the goods delivered by us in the normal course of business or to combine them with other items. The processing or connection is made for us as manufacturer i.S.d. § 950 BGB, so that we acquire property of the processed or coherent objects without any obligation of ours arising. Insofar as our property is lost by the processing of the goods, the buyer is obliged to grant us joint-ownership to the newly created item, as far as he is himself (jointly) owner.

**5.** The purchaser is entitled to resell the delivered goods or the products resulting from working, processing, mixing or the connection thereof in the ordinary course of business, but only with reference to the reservation of title. The buyer's claims arising out of the resale of the reservation goods are immediately transferred to us at the amount of the final invoice amount (including VAT) to secure all our claims arising from the business relationship, whether these goods are sold to one or more customers without

being processed or after being processed. We are already accepting the assignment now. If the conditional commodity is sold by the purchaser together with other goods not sold by us, the receivable from the resale shall be assigned in proportion to the value of the invoice of the other sold goods. In the case of the sale of goods which we hold shares in accordance with section 4 of this paragraph, a portion of the claim corresponding to the co-ownership share shall be assigned to us. The same applies if the goods under reservation of title are the subject matter or partial object of a work contract or a similar contract, either alone or with other goods. The purchaser is authorized to collect the assigned claims as long as he meets his contractual obligation to pay us in due time.

We undertake to release the collateral which is due to us at the Purchaser's request insofar as the liquidable value of the collateral exceeds the claims to be secured by more than 10%; the selection of the securities to be released is subject to our discretion. In case of breach of contract by the buyer, in particular in the event of a delay in payment, we are entitled to withdraw from the contract in accordance with the statutory provisions and / or to extract and withdraw the goods delivered under retention of title; the buyer is obliged to release the goods. The withdrawal request and the withdrawal of the goods do not constitute a rescission of the contract, unless we have expressly declared this in writing. On the contrary, we are justified in extracting only the goods and reserving our rescission. If the purchaser does not pay the due purchase price, we can only assert these rights if we have previously set a reasonable deadline for payment to the purchaser or if such a deadline is not required according to statutory provisions. After withdrawal of the goods delivered under retention of title, we are entitled to dispose of the goods. The proceeds from the sale must be credited to the buyer's liabilities less appropriate costs of disposal.

#### **§ 6 Delivery time**

**1.** Delivery and performance dates or deadlines, which do not expressly come from a member of our management and are bindingly confirmed in writing are non-committal indications. The delivery period starts with the reception of the order confirmation by the buyer, but at the latest 3 days after dispatch of the order confirmation by the seller. The period does not start before the buyer procured the documents to be furnished by him, official approvals, clearances, and it does also not start before all technical issues are solved and not before the advance payment agreed on is received. In addition, compliance with the delivery period by the seller requires compliance of the buyer with his obligations. Our right to plead non-performance of the contract remains reserved.

**2.** The delivery period shall be deemed to have been met if the delivery item leaves the factory or is declared ready for dispatch until its expiry. Our delivery obligation is subject to correct and timely delivery of our suppliers, unless the incorrect or non-timely self-delivery is due to us.

**3.** Events of force majeure entitle us - even within the period of delay - to postpone the provision of services for the duration of the obstruction. Force majeure shall be deemed to be equal to all circumstances which we shall not be responsible for, and which render the performance impossible or unreasonable, e.g. lawful strike or legal

lockout, war, import and export bans, lack of energy and raw material, administrative measures, and supply to ourselves which is not timely and for which we are not responsible for ourselves. If the obstruction persists for more than two months, the purchaser shall be entitled to withdraw from the contract after the expiry of a reasonable period if he proves that the full or partial fulfilment of the contract due to the delay is no longer of interest to him.

4. Should shipment be delayed upon the request of the buyer, the buyer shall be charged each month for the storage costs, beginning one month after notification of readiness for shipment. If the goods are stored at our factory, storage costs will be at least 5% of the invoice amount for each month. Damage caused by a delay in acceptance is not excluded. We are entitled, after the expiry of a reasonable period of time, to dispose of the object of delivery elsewhere and to furnish the ordered goods to the purchaser within an adequately extended period.

5. We are entitled to partial deliveries if

- the partial delivery is usable for the purchaser within the scope of the transmission of liches,
- the supply of the goods free of charge is ensured and
- the purchaser does not incur a considerable additional expense or additional costs.

6. If the delivery is not timely, the buyer is obliged to grant us an extension of the time period, which is to be at least fourteen working days. All reminders and deadlines of the Purchaser need to be in writing. The extended liability according to § 287 BGB is excluded.

#### **§ 7 Shipping, packaging, transfer of risk, acceptance**

1. The method of shipping and packaging are subject to our discretion.

2. By handing over the goods to the place designated for the execution of the shipment (whereby the start of the loading process is decisive), at the latest with the leaving of our factory or warehouse, the risk is transferred to the buyer, regardless of who bears the freight costs and whether the goods are dispatched from the place of performance. This also applies if partial deliveries are made or we have taken over other services (for example, shipping or installation). If the shipment is delayed due to circumstances for which the buyer is responsible, the risk shall pass to the buyer with the declaration of readiness for dispatch or readiness for collection of the goods.

3. The shipment is insured against theft, transport, breakage, fire and water damage or other insurable risks by us only at the explicit request of the purchaser and at his expense.

4. In the case of transport damage, the purchaser shall promptly instruct the competent authorities (transport companies) to make a statement of the facts and to notify us in writing. Delivered goods shall be accepted by the buyer without prejudice to his warranty rights, even if they show insignificant defects.

5. If an acceptance takes place, the goods shall be deemed accepted if:

- the delivery and, if we owe the installation, the installation is completed,
- we have notified the purchaser of this fact by referring to the assumption of acceptance pursuant to this § 7 para. 5 and have requested him to accept the goods,

- twelve working days have elapsed since the delivery or installation, or the buyer has begun to use the goods and in this case six workdays have elapsed since delivery or installation, and

- the customer has refrained from accepting the goods within this period for a reason other than for a defect notified to us, which makes the use of the goods impossible or substantially impaired.

#### **§ 8 Warranty for defects of the delivery**

1. The warranty period shall be one year from the date of delivery or, as far as acceptance is required, from the date of acceptance. This period does not apply to claims for damages by the customer resulting from injury to life, body or health, or from intentional or grossly negligent breach of duty on our part, or from our fulfilment allowances, which lapse according to statutory provisions.

2. The goods delivered must be carefully inspected immediately after delivery to the buyer or to the third party designated by him. They shall be deemed to have been approved by the Purchaser in respect of obvious defects or other recognizable defects, which would have been recognizable in the case of an immediate and thorough investigation, if a written complaint is not received within seven working days after delivery. With regard to other defects, the delivery items shall be deemed to have been approved by the Purchaser if the complaint is not received by us within seven working days after the date of the defect; if the defect was already recognizable for the customer under normal use at an earlier date, the earlier date is decisive for the start of the complaint period. At our request, a complained delivery item shall be returned to us free of freight charges. In the case of justified complaints, we will reimburse the costs of the most favourable route; this does not apply to the extent that the costs increase because the delivery item is located in a place other than the place of the intended use.

3. In the case of justified, timely notification of defects as per the preceding clause. 2. we provide the agreed upon quality of the goods delivered by us according to the rules of the statutory law on the Sale of Goods and according to the following regulations.

4. In the case of proven deficiencies, we provide warranty by supplementary performance in such a way that we at our choice give the buyer a new defect-free product (subsequent delivery) or eliminate the defect (rectification). In the case of rectification, the purchaser shall, on our request, provide details of the defects and provide written reports on the deficiencies and procure other data suitable for the analysis of the defect. In addition, he has to send the defective good on our request either to a place to be designated by us for the purpose of rectification or to provide it for on-site repairs. We shall bear the costs of the improvement, insofar as these do not increase as a result of the delivery item having been delivered to a place other than the one stipulated in the contract after delivery. The improvement shall be deemed to have failed with the second vain attempt, insofar as no further attempts to remedy the defect are reasonable and bearable for the buyer due to the delivered goods.

In the case of proven legal deficiencies (defects of title), we provide warranty by means of supplementary performance by providing the purchaser with a legally

perfect possibility of use of the delivered goods or, at his choice, of replaced or other equivalent goods. If the purchaser receives deficient assembly instructions, we are only obligated to supply an accurate assembly instruction and this also only if the defect of the assembly instructions is impeding the correct assembly.

**5.** If the rectification is unsuccessful, the purchaser may withdraw from the contract or reduce the purchase price. This presupposes the expiry of a written deadline of an appropriate length, unless a deadline is dispensable according to the applicable statutory regulations.

**6.** If the buyer chooses withdrawal from the contract due to a legal or material defect, he shall not be entitled to any compensation for damages due to the defect. In the case of withdrawal, the buyer is liable for deterioration, destruction and failure to derive benefits from the goods not only for his own due care, but for every fault of his.

**7.** Compensation or reimbursement of frustrated expenses due to a defect shall be paid within the limits set out in § 9 of these Terms and Conditions of Sale and Delivery.

**8.** Statements on our part about the nature of the goods, shall not be regarded as a guarantee of quality, unless the parties expressly agree on them. In the event of a guarantee issued by us the rights of the purchaser shall be determined in accordance with the guarantee.

The buyer has to assert his rights from the guarantee against us in writing within two months after the occurrence of the event provided for in the guarantee (exclusion period). Public statements or advertisements do not constitute a legally binding description of the quality of the goods.

**9.** If the warranty is a recourse of the purchaser because a consumer asserted his rights of warranty according to the statutory provisions on the Sale of Goods to consumers against the purchaser, the recourse claims are not affected by the provisions on the purchase of consumer goods. § 9 of these Conditions of Sale and Delivery does apply to claims for damages. The buyer is obliged to notify us without delay of any recourse occurring in the supply chain. Otherwise, the goods are considered as approved. Recourse claims of the buyer against us are established only insofar as the buyer has not made an agreement with his customer which exceeds the statutory claims for defects.

The purchaser's claim for reimbursement of frustrated expenses is excluded for such expenses which would not have been incurred if the purchaser would have been adequately prepared for the supplementary performance. If the goods are stored at the site of the purchaser for a considerably longer period than the customary commercial period, the purchaser must and prove that the goods were already deficient at the time of the transfer of the risk.

**10.** In particular, we do not assume any liability for the following damages, which have arisen for the following reasons, if they are not due to our fault:

Incorrect or incomplete information of the buyer concerning the operating conditions of the purchased item; unsuitable or improper use; faulty assembly or commissioning by the buyer; natural wear; incorrect or negligent treatment; unsuitable equipment; incorrect maintenance or repair work; chemical, electrochemical or electrical influences.

**11.** In the case of defects of components of other manufacturers, which we can not remedy for licensing or

actual reasons, we shall, at our discretion, assert our warranty claims against the manufacturers and suppliers for the account of the purchaser or assign them to the buyer. Warranty claims against us in the case of such defects under the other conditions and in accordance with these general terms of delivery exist only if the judicial enforcement of the aforementioned claims against the manufacturer and suppliers was unsuccessful or, for example due to insolvency, have no prospect. During the duration of the legal dispute, the statute of limitations of the warranty claims of the buyer against us shall be suspended.

**12.** The warranty is void if the purchaser changes the delivery item without the consent of us or if it is modified by a third party and this makes it impossible or unreasonable to rectify the defect. In any case, the buyer shall bear the additional costs resulting from the modification of the defect rectification.

**13.** A delivery of used goods agreed with us in individual cases takes place with the exclusion of any guarantee for material defects.

### **§ 9 Limitations of liability**

**1.** Irrespective of the following liability limitations, we shall be liable according to the statutory provisions for damages to life, body and health which are based on a negligent or intentional breach of duty by us, our legal representatives or vicarious agents, as well as for damage resulting from the liability according to the ProdHaftG (German Product Liability Act) as well as for all damages resulting from intentional or grossly negligent breaches of contract as well as fraudulent acts of our legal representatives or vicarious agents. As far as we have given a quality and / or durability warranty with regard to the goods or parts thereof, we are also liable under this guarantee. For damages which are based on the absence of the guaranteed condition or durability, but not directly on the goods, we are liable only if the risk of such damage is evidently covered by the condition and durability guarantee.

**2.** We shall also be liable for damages caused by a simple negligent breach of such contractual obligations, the fulfilment of which will allow the proper execution of the contract in the first place and on which the buyer may regularly rely and trust. The same applies if the purchaser is entitled to claims for compensation instead of performance. However, we are liable only to the extent that the damages are typically related to the contract, are foreseeable and should be prevented by the duty breached; in these cases, our liability is limited to EUR 300,000.00 per claim.

**3.** Any further liability on our part shall be excluded without regard to the legal nature of the asserted claim; this shall also apply, in particular, to tort claims or claims for reimbursement of frustrated expenses. As far as our liability is excluded or limited, this also applies to the personal liability of our employees, employees, employees, representatives and vicarious agents.

**4.** Insofar as we provide technical information or act as an adviser and this information or consultation does not belong to the contractually agreed scope of services which we owe, this is free of charge and without any liability.

**5.** A period of limitation of one year applies to all claims for deficiencies asserted against us. This does not apply to a

product which has been used for a building in accordance with its regular use and which has caused its defect or if we are guilty of fraudulent use. The limitation begins with the expiry of the date specified in § 199 para. 1 BGB (German Civil Code). It lapses no later than the expiry of the maximum periods specified in § 199 para. 2 to 4 BGB. In the event of legal deficiencies, which exists in a title of a third party on the basis of which the latter can demand to recover possession of the goods, the limitation period is 10 years.

In the case of a fraudulent violation of life, body or health by us, our legal representatives, employees or vicarious agents as well as in cases in which we, our legal representatives, employees or vicarious agents have acted intentionally or with gross negligence and in cases of a liability under the ProdHaftG (German Product Liability Act), the statutory limitation periods apply.

The suspension of the limitation of claims arising out of or in connection with the contractual relations between the parties pursuant to § 203 BGB (German Civil Code) shall end at the point of time when we or the buyer refuse to continue the negotiations on the claim or the circumstances giving rise to the claim. Unless one of the parties expressly declares in writing the failure of the negotiations, the continuation of the negotiations shall be deemed to be denied six months after the last correspondence which is the subject of the claim or the circumstances giving rise to the claim.

#### **§ 10 Access regulation according to EN/AS ISO 9100**

In the case of an order for goods for the aerospace industry, we obligate ourselves to ensure access to authorities and end customers in the business premises and operating premises of our company according to EN / AS ISO 9100 and to provide our supplier with a corresponding contractual obligation to ensure that they ensure access for authorities and end-users to their company's premises and premises as defined by EN / AS ISO 9100.

#### **§ 11 Intellectual Property Rights**

1. In accordance with § 11, we shall ensure that the delivery item is free of industrial property rights or copyrights of third parties. Each contractual partner shall notify the other contractual partner immediately in writing if he is asserted claims against the infringement of such rights.

2. In the event that the delivery item infringes a third party's industrial property right or copyright, we shall, at our discretion and at our expense, alter the type of the goods to be delivered or exchange them so that no further rights of third parties are infringed, but in a way that still fulfils the contractually agreed functions, or we are going to furnish the purchaser the right to use the goods by the conclusion of a license agreement with the third part. If we are not able to deliver the goods without infringing a third party's industrial property right or copyright within a reasonable period, the buyer is entitled to withdraw from the contract or reduce the purchase price.

Any claims for damages on the part of the buyer are subject to the limitations of § 9 of these general terms of sale and delivery.

3. In the case of legal infringements by products of other manufacturers delivered by us, we shall, at our discretion, assert our claims against the manufacturers and suppliers

for the account of the purchaser or assign them to the buyer. In these cases, claims against us are subject to the provisions of this § 11 only if the enforcement of the aforementioned claims against the manufacturers and suppliers was unsuccessful or, for example due to insolvency, was without prospect.

#### **§ 12 Place of Performance, Jurisdiction, Applicable Law, salvatory clause**

Place of performance, unless otherwise stated in the confirmation of order - as well as exclusive jurisdiction for all disputes arising from the contractual relationship shall be the seat of our company. If we also owe the installation, the place of fulfilment is the place where the installation is to be carried out.

The contractual relationship is subject to German law. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded. Should individual provisions of the contract concluded between us and the buyer or these conditions be or become ineffective, this does not affect the effectiveness of the agreements reached. Instead of an ineffective provision, a provision is to be agreed which is closest to the economic purpose of the parties. The same applies in the event that the contract contains gaps.

Neuss, October 2017

Hebmüller SRS Technology GmbH

Hebmüller Trading GmbH