

## **General Terms and Conditions of Tianma Europe GmbH (Version: July 2017)**

**1 Applicability** These General Terms and Conditions (hereinafter referred to as "GTC") shall apply to all deliveries and services (hereinafter jointly referred to as "Deliveries") of Tianma Europe GmbH (hereinafter referred to as "TIANMA") to entrepreneurs, legal entities under public law and special funds under public law (hereinafter referred to as "Customer"). Within ongoing business relationships to the Customer, these GTC shall apply to all future Deliveries without the need to explicitly refer to the application of these GTC each time.

Terms and conditions of the Customer deviating from or amending these GTC or statutory provisions shall only apply if and to the extent explicitly accepted by TIANMA in writing. We do not accept general terms and conditions of the Customer even if we do not expressly object to such general terms and conditions or if we perform Deliveries without reservations.

**2 Conclusion of Contract** Unless agreed upon otherwise, our offers are non-binding and without commitment.

A contract is concluded upon our written order confirmation or upon rendering of the Deliveries.

We may accept offers of the Customer within fifteen (15) working days. Such offers shall be binding for the Customer until this period expires.

The scope and object of the Deliveries shall exclusively be defined by our order confirmation or, in case of immediate order execution, by the delivery note.

**3 Prices/Terms of Payment/Set-Off** Unless agreed upon otherwise, prices are stated in Euro on an ex-works basis (EXW, Incoterms

2010) plus VAT in the respective statutory amount, not including any ancillary services such as packaging, loading, freight, discharge, transport insurance, assembling, customs, installation, implementation, introduction, training, maintenance, expenses, travel costs and other expenses. The relevant special terms and conditions as well as the technical specifications as published within the price lists, framework and agency agreements shall apply supplementary to the individual Deliveries.

Unless agreed upon otherwise, our invoices shall be due for payment immediately, net, without any deduction. In case of transactions with Customers situated outside Germany, we are entitled to demand an irrevocable letter of credit confirmed by a German bank for 100 % of the agreed upon price. The ERA 600 (Uniform Customs and Practice for Documentary Credits of the ICC Paris) shall apply.

A cash discount is admissible only upon our explicit written consent. An agreed cash discount is calculated from the net invoice amount after the deduction of discounts, freight costs and other ancillary costs.

In case of payment default, we are entitled to claim default interest at the statutory rate (Sec. 288 of the German Civil Code (*BGB*)). Moreover, in the case of payment default, we are entitled to – without prejudice to any further claims – accelerate the maturity of all payment claims under this contract so that they are due for payment immediately or to demand adequate security. In this case, we are entitled to withhold any outstanding Deliveries unless they are paid for in advance or unless an appropriate security is furnished.

The Customer is entitled to retention and set-off only insofar as its counterclaims are undisputed, have been finally adjudicated or share a reciprocal relationship with our claim.

In case the agreed delivery time exceeds four (4) months, we reserve the right to unilaterally adjust the price pursuant to Sec. 315 of the German Civil Code (*BGB*), provided that the market costs of a Delivery/a product have

increased by more than ten (10) % since the conclusion of the contract (e.g. as a result of a collective wage agreement or changes of material costs), whereas the adjusted price shall correspond with the cost increase.

In case we provide documentation for certain Deliveries, these are available digitally on data media or as free download on our homepage. Hardcopies are available for a fee.

**4 Delivery/Transfer of Risk** With the separation of the Deliveries and the notification of the readiness for dispatch, at the latest, however, after leaving of the shipping point, all risks associated with the accidental destruction and the accidental deterioration of the Deliveries pass to the Customer. In the event that an acceptance has to be conducted, this shall be decisive for the transfer of risk. Such acceptance shall be made without undue delay on the acceptance date, alternatively after notification of the readiness for acceptance. The Customer is not entitled to refuse acceptance due to an insignificant defect.

The compliance with agreed delivery dates requires the clarification of all commercial and technical questions, the timely receipt of all provisions of material to be conducted by the Customer as well as of all documents, permits and releases and the Customer's compliance with the agreed terms of payment and other obligations. If one of these preconditions is not fulfilled, the agreed delivery dates shall be postponed accordingly.

Our delivery obligations are subject to the reservation of our own proper and timely supply; we will notify of any such delays. Apart from that, the delivery obligation is subject to the reservation that the performance is not prevented by obstacles due to national or international rules of foreign trade law or by embargos or other sanctions.

We have the right to make partial deliveries to the extent that these are reasonable for the Customer. We may invoice such partial

deliveries separately; the freight costs for all partial deliveries may not exceed the agreed freight costs. Overdeliveries or underdeliveries that are customary for the industry are permitted and shall be deemed in line with the contract.

Shipment takes place without any guarantee for the lowest costs of transport at the Customer's expense and risk.

Deliveries which have been reported as being ready for dispatch shall be picked up by the Customer without undue delay; otherwise we are entitled to store the Deliveries at the Customer's expense and risk.

If we have undertaken shipment, the Deliveries shall be discharged after arrival at the Customer's site without undue delay. In case the discharge is delayed for more than 2 hours, the Customer shall bear the costs for the retention time of the means of transport. If Deliveries are to be exported and declared, the Customers shall bear the costs for a retention time of more than 48 hours, if declaration is not owed, of more than 24 hours.

If and to the extent we store Deliveries after having notified the Customer about the readiness for dispatch because the pickup of the Deliveries by the Customer is delayed by more than one (1) month, we are entitled to charge the Customer a storage fee from the second (2) month of the delay for each additional, commenced month of delay in an amount of 0.5 % of the invoiced amount of the stored Deliveries, however, no more than a total of 5 % of the net invoiced amount of the stored Deliveries as lump-sum damages; this does not apply in case the Customer is not responsible for the delayed pickup. The Customer may provide evidence that no damage at all or considerably less damage occurred. We reserve the right to prove that due to the delayed pickup of the Deliveries a higher damage occurred.

Unless otherwise agreed upon, no instruction and consulting is owed to the Customer. Any verbal or written technical advice to the

Customer including tests is made to our best knowledge, but shall only be considered as non-binding advice, also in relation to the property rights of third parties and, thus, does not release the Customer from his obligation to inspect the Deliveries for their suitability for the intended processes and purposes. The application, use and processing of the Deliveries are beyond our control and are therefore entirely within the Customer's liability.

Force majeure, requirements of public authorities and other circumstances beyond our control (e.g. strikes, lockouts, material procurement problems, civil disturbances, embargos or travel warnings by the Foreign Office) which do not only hamper or prevent our performance or the performance of our suppliers temporarily shall release us from our delivery obligation for the period of their duration plus a reasonable start-up time. If the incidents of force majeure or incidents equated thereto last for more than three (3) months, both parties are entitled to withdraw from the contract in whole or in part, provided that an adjustment of the contract is not possible. The Customer is released from his respective counter obligations.

Our liability for damages caused by delay in delivery is limited to 0.5 % of the net order value of the late Deliveries for each full week of delay, however, in total 5 % in aggregate of the corresponding net order value of the late Deliveries. Further claims of the Customers for damages because of delay of delivery are excluded. The above limitations of liability do not apply in the case of intent or gross negligence („*grobe Fahrlässigkeit*“) or of culpable damages to life, body or health.

**5 Retention of Title** Until all of our claims against the Customer arising out of the business relationship have been completely fulfilled, we retain ownership of the Deliveries (Reserved Goods). In case of current accounts,

this retention of ownership also serves to secure any balance claim.

The Customer may only resell the Reserved Goods in the ordinary course of business. The Customer is not entitled to dispose of the Reserved Goods otherwise, in particular he is not entitled to pledge them or to transfer the title on such Reserved Goods as security.

The Customer is entitled to process the Reserved Goods. This processing is exclusively performed for us as producers in the sense of Sec. 950 of the German Civil Code (*BGB*), free of charge and, however, without any obligation for us. The processed goods are considered being Reserved Goods.

In the case of processing, combining or mixing Reserved Goods with goods which we do not own, we acquire co-ownership of the new products. The extent of this co-ownership is determined by the ratio of the invoiced value of the Reserved Goods to the invoiced value of the remaining goods. If our ownership of the Reserved Goods ends due to combining or mixing, the Customer transfers his ownership rights in the new goods to us already now to an extent corresponding to the invoiced value of the Reserved Goods. The Customer shall keep the Reserved Goods safe free of charge.

The Customer hereby assigns to us by way of security already now all claims with all ancillary rights resulting from the resale of the Reserved Goods. We hereby accept the assignment. If the Customer sells Reserved Goods together with other goods not delivered by us, the assignment of the claim from the resale shall be limited to the amount of the resale value of the Reserved Goods. When reselling goods in which we own co-ownership shares, a claim equal to the amount of the resale value of these co-ownership shares is assigned.

The Customer is revocably authorized to collect the claim assigned to us on our behalf. Our authorization to collect the claim ourselves remains unaffected. We are entitled to the disclosure of the assignments.

The permission to resale and the collection authorization lapses if (i) the Customer is in delay with payment under the business relationship, (ii) the Customer disposed of the Reserved Goods outside of the ordinary course of business and/or (iii) a material deterioration of the Customer's financial situation becomes evident after the conclusion of contract which endangers any of our claims.

We will release any securities to which we are entitled upon Customer's request to the extent that the realizable value of the security exceeds the claims to be secured by more than 10 % in aggregate.

The Customer shall preserve the Reserved Goods in perfect condition. The Customer shall insure the Reserved Goods in our favor at its cost against theft, breakage, fire, water and other damage, provided this is reasonable to him. Upon request, evidence shall be submitted.

In the event of any action of third parties against the Reserved Goods, in particular by enforcement measures, the Customer shall inform the third party about our proprietary right and instruct us without undue delay.

**6 Liability for Defects** Unless otherwise agreed upon, our Deliveries shall comply with the agreed specifications which describe the owed quality of our Deliveries conclusively at the time of the transfer of risk.

If necessary, the Customer shall examine through tests whether the Deliveries are suitable for the intended purpose. We reserve the right to make changes due to technical progress.

The Customer is required to examine the Deliveries upon delivery without undue delay, in particular regarding quantity, weight and packaging and has to arrange at least sample quality tests to be carried out. We shall be notified of any defects in writing without undue delay. The notification of defects shall exactly

indicate the type and scope of the defect. Transport damage shall also be documented vis-à-vis the carrier.

We have the right to remedy defects by way of subsequent performance. We may choose to provide subsequent performance either through repairs or replacement delivery. The Customer shall grant us the time necessary and the opportunity to conduct the subsequent performance. Place of fulfillment of the subsequent performance is our place of business.

Rectification and replacement deliveries are carried out based on goodwill and without acknowledging any legal obligation. An acknowledgment leading to a restart of the statutory limitation period only exists if we explicitly declare such to the Customer. Except for the case of an explicitly declared acknowledgement, any rectification or replacement delivery does not lead to a new limitation period.

All claims based on defects shall further be excluded in case of damage which arises after the transfer of risk as a consequence of inadequate or incorrect treatment, incorrect assembly or commissioning, failure to follow the recommendations of the manufacturer, natural wear and tear, incorrect or negligent handling or storage, improper maintenance and care, unsuitable equipment, chemical, electro-chemical, electric or environmental influences or as a result of any other external influence outside of our sphere of our responsibility which was not assumed under the contract. The same shall apply to any modifications to the Deliveries without our consent.

We do not assume any warranty for Deliveries which are sold as used products. Claims and rights of the Customer arising out of defects of used products are excluded; this applies in case of defects arising between conclusion of the contract and handover of the used product as well. This shall not apply for claims for damages and expenses of the Customer due to defects of

the used product according to the Clause 7 of the GTC.

The Customer shall be liable for any unjustified notices of defect, provided that the defect's reason lies within the Customer's sphere of responsibility and he at least negligently did not recognize this fact. Expenses due to Customer's unjustified defect claims which we do not bear under the terms of warranty will be charged to the Customer.

Unless otherwise agreed upon, the limitation period for claims and rights of the Customer arising from defects in quality or title shall be one (1) year starting from the statutory beginning of the limitation period. Notwithstanding this provision, the statutory limitation period shall apply (i) with respect to all claims and rights of the Customer in case of Sec. 438 (1) No 1 a) (third party's right in rem) and b) (right, which is entered in the land register) of the German Civil Code (*BGB*), Sec. 438 (1) *BGB* (buildings and items used for buildings), Sec. 634 a (1) No 2 *BGB* (building defects), Sec. 479 (1) *BGB* or in case we fraudulently conceal a defect and/or (ii) in cases of intent or gross negligence ("*grobe Fahrlässigkeit*"), of injury to life, body or health, or of liability under the German Product Liability Act ("*Produkthaftungsgesetz*").

Regarding claims for damages and expenses due to defects Clause 7 shall apply exclusively.

**7 Liability** Claims for damages and expenses (hereinafter referred to as „Damages“) of the Customer against us, irrespective of the legal basis, shall be excluded. This exclusion of liability shall not apply (i) in case of a liability under the German Product Liability Act (*Produkthaftungsgesetz*); (ii) in case of intent or gross negligence ("*grobe Fahrlässigkeit*"); (iii) in case of culpable injury of life, body or health, and (iv) in case of a culpable infringement of material contractual duties which fulfilment is essential for enabling the due performance of the contract and on which observation the Customer normally and

properly relies. However, the liability concerning material contractual duties shall be limited to typical foreseeable damage, unless we are liable due to intent or gross negligence ("*grobe Fahrlässigkeit*"), injury of life, body or health or under the German Product Liability Act (*Produkthaftungsgesetz*).

To the extent our liability is excluded or limited according to this Clause 7, this shall equally apply for the respective personal liability of our employees, persons used to perform our obligations and legal representatives.

The Customer is obliged to create back-up copies to prevent data loss and therewith related damages. Our liability for loss of data is limited to the costs of recovery arising from restoration from backups and for the cost of reconstructing of data that would have been lost in case backups were made in appropriate intervals. This limitation of liability shall not apply in cases of intent or gross negligence ("*grobe Fahrlässigkeit*"), of injury of life, body or health or of liability under the German Product Liability Act (*Produkthaftungsgesetz*).

## **8 Intellectual Property Rights**

These GTC do neither grant the Customer any right, claim, or other interest in our intellectual property and copy rights, nor do these GTC grant the Customer any right to use or otherwise refer to our brands, unless we explicitly gave the Customer advance permission. This shall also apply in case a remuneration (e.g. tool costs) for planning and/or the development of a Customer's tool was paid. Reproduction or transfer to third parties is prohibited.

Unless otherwise expressly agreed upon, we are required to provide Deliveries free of third-party intellectual property rights and copy rights (hereinafter "Proprietary Rights") only in the country of the place of performance at the time of the transfer of risk.



If and to the extent a third party asserts justified claims against the Customer because of an infringement of Proprietary Rights by Deliveries, we shall be liable to the Customer as follows:

We shall at our expense either obtain a right of use for the Deliveries, change the Deliveries in such a way Proprietary Rights are not infringed or replace the Deliveries. If this is impossible for us at reasonable terms, the Customer shall after expiry of a reasonable period of time have the right to reduce the price or withdraw from the contract. For claims for damages and expenses Clause 7 shall apply exclusively. The Customer shall inform us in writing about claims asserted by third parties without undue delay, shall not acknowledge any violation of Proprietary Rights and shall reserve us all defense measures and reference actions. If the Customer ceases to use the Deliveries for reason of damage limitation or other important reasons he is obliged to draw the third party's attention to the fact that the cessation of use does not constitute any acknowledgement of violation of Proprietary Rights.

Claims of the Customer are furthermore excluded to the extent that the Proprietary Rights infringement is caused by requirements of the Customer, by use of the Deliveries that was not foreseeable for us or because the Deliveries are modified by the Customer or used with products that were not delivered by us.

Any other rights and claims of the Customer than those stated in this Clause 8 due to an infringement of a Proprietary Rights are excluded. For claims based on any other legal defects Clause 6 shall apply accordingly.

As far as the Deliveries have been manufactured according to designs or instructions provided by the Customer, the Customer shall indemnify and hold us harmless against any claims, in particular claims due to infringement of Proprietary Rights, unless the Customer is not responsible for the infringement of such Proprietary Rights.

We retain our unrestricted ownership and copy rights as well as our rights resulting from the ownership and copy rights to our samples, tools, specifications, models, plans, data, drawings, and other tangible or intangible information (hereinafter "Documents"). The Customer is entitled to use the Documents for the intended purpose only. The Customer is not authorized to use the Documents for any other purpose, particularly not for a complete or partial reproduction of the Deliveries. The Documents may be made accessible to third parties only upon our prior consent and must be returned to us upon request without undue delay if the order is not awarded to us.

**9 Confidentiality** The Customer shall treat all contents of the contract, in particular prices and discounts, know how as well as other business and trade secrets (hereinafter referred to as "Confidential Information") as strictly confidential and shall not pass or make Confidential Information available to third parties without our prior written consent. The Customer shall impose this confidentiality obligation on his employees and affiliated companies as well as third parties to whom Confidential Information is made available.

The confidentiality obligation shall not apply in respect to such Confidential Information regarding which the Customer is able to prove that it (i) is already generally known or becomes generally known without the Customer violating his confidentiality obligation, or (ii) is known to the Customer before receipt without a confidentiality obligation or (iii) was lawfully received – e.g. from third parties – without any confidentiality obligation.

We are entitled to cite the Customer and the project as a reference. The Customer is not permitted to use the contract for advertising purposes without our prior consent.

**10 Final Provisions** The contract shall be governed and construed by the laws of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (*CISG*).

Exclusive place of jurisdiction for all disputes between us and the Customer is Düsseldorf. We are, however, entitled to sue the Customer at his general court of jurisdiction or before any other competent court.

If this contract is drafted in different languages, the German version shall prevail in case of doubt.

Unless otherwise agreed upon, place of performance for all obligations is our registered office.

The Customer is not entitled to transfer any rights arising from this contract without our prior consent. Sec. 354a of the German Commercial Code (*HGB*) shall remain unaffected.

Unless agreed upon individually, any modifications and amendments to this contract require written form; fax shall constitute written form. This shall also apply to any waiver of the written form requirement.

The partial ineffectiveness of individual provisions shall leave the effectiveness of the remaining provisions and of this contract as a whole unaffected.

Any mistakes, unforeseeable gaps and contradictions within in this contract shall be dealt with and interpreted in accordance with the principles of this contract on the basis of mutual trust and with regard to the mutual interest of the parties.