

# TIEFENBACH

Control Systems GmbH



Tiefenbach Control Systems GmbH · Rombacher Hütte 18A · D-44795 Bochum

## General Terms and Conditions of Business of Tiefenbach Control Systems GmbH Status November 2017

### 1.0 Scope of application of our General Terms and Conditions of Business

1.1 Our deliveries shall exclusively be made on the basis of the terms and conditions stated below. The latter shall also be applicable to all future deliveries, performances, or quotations to the customer even if they are not agreed again separately.

1.2 The contracting party is in agreement with the scope of application of these terms and conditions.

1.3 We herewith expressly object to any terms and conditions of purchase and general terms and conditions of business of the contracting party. They will not be binding on us even if their inclusion has not been opposed separately in an individual case or if deliveries have been made or services provided the contracting party although deviating or opposing terms and conditions of the contracting party are known.

### 2.0 Quotations and conclusion of contract

2.1 Our quotations are not binding and subject to the timely and complete delivery by our own suppliers.

2.2 We can accept quotations and purchase orders of our customer in writing, by telefax or email within 14 days after receiving them. If our declaration of acceptance is received after the acceptance period has elapsed this shall be deemed a new quotation to the contracting party.

2.3 The contracting party's purchase order in the form of our order confirmation and these terms and conditions reflect the contractual relations between the parties in their entirety. Supplementary arrangements do not exist.

Changes to the contract or these terms and conditions shall be made in writing or shall be confirmed by us in writing in order to be effective. With the exception of our managing directors or

executives holding general commercial power of attorney (Prokurist) employees shall not be entitled to make any oral agreements deviating herefrom. Transmission by telecommunication means, particularly by telefax or email, will suffice to show that the requirement of written form has been met provided a copy of the signed declaration will be submitted.

### 3.0 Prices

3.1 Unless provided otherwise to the contrary, our deliveries will be made at the prices valid at the date of our purchase order.

3.2 If delivery is to be made later than four months after the date of the purchase order the calculation will be based on the prices valid at the date of delivery (less an agreed fixed discount or a discount in per cent).

3.3 Unless provided otherwise to the contrary all prices are net prices without turnover tax, the latter being payable additionally by the contracting party at the respective legal rate. Notwithstanding any provisions to the contrary all prices stated refer to the European currency (Euro).

3.4 Our prices do not include any freight, packaging, insurance or any other incidental expenses. These shall have to be borne by the contracting party and will be charged to the latter. Freight, packaging and insurance and any other incidental expenses will be calculated in accordance with the provisions agreed when confirming the order.

### 4.0 Terms of payment and set-off

4.1 Payment shall have to be made net 30 days from date of invoice.

4.2 Upon expiry of the payment term according to item 4.1 the contracting party is deemed to be in default. As of this point of time interest will have to be paid on the amount due to us at the respective legal interest rate for late payments. This shall not



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affect the right to claim any further damage due to late payment. Our claim for commercial interest after due date vis-à-vis merchants remains unaffected.

4.3 Bills of exchange will only be accepted by us after express previous agreement. Discounting expenses and interest as well as any other expenses incurred by us will be passed on to the contracting party. Payments by bills of exchange will only be deemed to have been made after the bill has been honoured by the drawee.

4.4 Payments by cheque will only be deemed to have been made after they have been irrevocably credited to our account.

4.5 The contracting party will only be granted rights of set-off or retention to the extent that its claim becomes legally enforceable or is undisputed. In the event of defects in delivery the reciprocal right of the contracting party shall remain unaffected, particularly in accordance with item 7.0 of these terms.

## 5.0 Delivery

5.1 Our delivery shall generally be made ex works. To the extent that delivery to a different location has been agreed transport will be made at costs and risk of the contracting party. The risk shall pass to the contracting party when the goods are forwarded to the carrier.

5.2 We are entitled to partial shipments to the extent that these are utilisable for the contracting party in accordance with their contractual intended use and no significant additional expenses are incurred by the contracting party. Partial shipments made can be invoiced separately.

5.3 When taking delivery of the goods the contracting party accepts the goods as conforming to the contract in essence.

## 6.0 Delivery dates, force majeure, and delay

6.1 Delivery dates and periods promised by us shall generally be deemed approximates, only, unless they have been agreed as fixed delivery dates.

6.2 Delivery periods will not start until all technical and commercial details of the order have been clarified. Delivery periods will be postponed by the period between our confirmation of order and the clarification of technical and commercial details.

6.3 Delivery periods and dates are considered to have been met when the goods ordered have left our factory or warehouse before the expiry date or when reported ready for shipment unless the goods could not be dispatched in due time due to circumstances beyond our control.

6.4 Cases of force majeure or any other unforeseeable exceptional events beyond our control as e.g. labour disputes, plant interruptions, official measures, transport problems, irrespective of whether these events occur at our premises or at our upstream supplier's shall discharge us from our obligations from the respective contract, impediments of a temporary nature, however, only for the duration of the impediment plus an adequate start-up period. If such events cause the delivery to be subsequently impossible or unacceptable for any of the parties both parties shall be entitled to withdraw from the contract.

6.5 Claims for damages due to the failure to meet delivery periods and dates shall be excluded unless provided otherwise to the contrary in writing. In the event of an entitlement to such claims the basis thereof shall be provided in writing and in detail. Loss of profit shall by no means constitute a damage within the meaning of this paragraph.

6.6 If the contracting party does not take delivery of the goods despite being requested to do so and a deadline of at least 2 weeks has been set we shall be entitled to withdraw from the contract and, subject to further claims for damages, to demand a lump-sum non-acceptance indemnification amounting to 40 % of the net price to be paid by the contracting party.

If the contract products have been manufactured individually according to specifications or on the basis of information provided by the contracting party the lump-sum non-acceptance indemnification in accordance to sentence 1 shall amount to 80 % of the net price to be paid by the



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contracting party. The assertion of further claims for damages will be expressly reserved in this case as well.

The onus is on the contracting party to prove that we have suffered no damage or a lesser damage.

## 7.0 Notifications of defect and warranty

7.1 Notifications and complaints due to obvious defects shall be raised in writing by the contracting party immediately, at the latest one week after receipt of the goods. Non-obvious defects shall be advised by the contracting party in writing immediately after they have been detected.

7.2 Any further obligations to lodge a complaint acc. to § 377 HGB (German Commercial Code) remain unaffected.

7.3 In the event of a notification of defects or complaint the contracting party shall send us samples of the rejected goods clearly showing the problem.

7.4 The contracting party can only assert its legal rights of warranty if it has fulfilled its obligations according to item 6.1 of these terms and conditions or any existing obligations to lodge a complaint pursuant to § 377 HGB (German Commercial Code).

7.5 Claims for warranty shall be asserted within a period of 12 months from delivery or, to the extent that an acceptance is required, from the date of acceptance.

7.6 Our goods are produced with the highest diligence in accordance with the respective latest state of technological know-how. Should claims for warranty of the contracting party exist nonetheless we will be granted the options of rectification or new delivery first, at our discretion. After two unsuccessful attempts to remedy the defect the contracting party shall have the right to withdraw from the contract or to reduce the purchase price or the claim of compensation for work performed.

## 8.0 Liability

We are liable for any damage occurring to the extent that this damage is the result of intentional or negligent violation of an essential contractual obligation or an intentional or grossly negligent conduct on our part. If an essential contractual obligation is violated negligently our liability will be limited to the foreseeable damage typical for this type of contract. A contractual obligation is essential if its fulfillment renders the proper execution of the contract possible or if the contracting party relied and could rely on it being fulfilled.

Any further liability for damages is excluded. The liability due to personal injury, bodily harm and damage to health pursuant to the legal regulations shall be unaffected as shall be the liability pursuant to the Product Liability Act.

## 9.0 Retention of title

9.1 We reserve the right to retain ownership of all goods delivered until full payment has been made, as a collateral for all existing and future debts irrespective of the legal ground. In the case of current accounts the retention of title secures the outstanding balance claims.

9.2 The contracting party will store the respective goods for us in accordance with normal trade practice.

9.3 In the proper course of business and as long as the contracting party is not in default the contracting party shall be permitted to sell on the goods which are subject to retention of title subject to its normal business conditions provided this sale will bring about a monetary claim from the sale. The contracting party herewith assigns to us its receivables from selling our goods. We accept this assignment. The contracting party is entitled to collect these receivables until revoked by us; it is not entitled, though, to dispose of these debts vis-à-vis a third party. When requested by us the contracting party will notify its customer of the assignment for the purpose of payment to us.



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9.4 The contracting party shall notify us immediately of any seizure of the goods subject to a retention of title or of the receivables assigned to us.

9.5 If payment is made by cheque or bill of exchange our rights in accordance with item 8.0 of these terms and conditions shall only lapse after the cheque or bill of exchange has been honoured by the drawee.

#### 10.0 Property rights

10.1 To the extent as we manufacture goods by order of or according to instructions or guidelines of the contracting party the contracting party shall ensure that the deliveries and services ordered are free from any third party property rights. It will indemnify us in these cases against all claims of any third party due to the violation of property rights.

10.2 We reserve ownership and all property rights and rights of use of documents made available (such as e.g. drawings, drafts, etc.), information (e.g. know-how) and objects (e.g. tools). The contracting party shall only be entitled to use them within the scope of the contractual relationship. Particularly, it shall not be entitled to duplicate objects or documents or make them or any other information accessible to any third parties.

#### 11.0 Final provisions

11.1 If the contracting party is a merchant or legal entity of public law within the meaning of § 29 a) para 2 ZPO (Code of Civil Procedure) or it has no general place of jurisdiction in the Federal Republic of Germany the place of jurisdiction for all disputes between the contracting parties shall be Beckum. This shall also apply to actions on dishonoured bills or cheques. However, we shall also be entitled to sue the contracting party at any other established place of jurisdiction.

11.2 The relationship between us and the contracting party is subject to German law excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the Conflict of Law rules. The INCOTERMS shall

apply to the interpretation of the contract in addition.

11.3 Should any individual provision of this contract be invalid or lose its validity due to a circumstance occurring later the validity of the remaining provisions hereof shall in no way be affected.

NOTE ACC. TO § 28 BDSG  
(Federal Data Protection Act)

We collect, store and use the data transmitted to us by the contracting party for the purpose of executing the contract within the limits imposed by the provisions of laws, ourselves or have them collected, stored and used by third parties selected and monitored carefully by us.



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