

General Terms and Conditions of Deliveries and Orders**for the Supply of Goods and Services to Merchants (Customers)
of ASM Automation Sensorik Messtechnik GmbH****1. Scope of Application**

Exclusively the following terms and conditions shall apply to the legal relations with our customers, even with respect to information and advice. Once our Terms and Conditions are introduced into the business with the customer, they shall also apply to all further business relations between the customer and ourselves, unless agreed otherwise in writing. Terms and conditions of the customer shall only be applicable if we expressly recognize them in writing. Our silence about variant terms and conditions shall not be considered as recognition or approval, not even with respect to future contracts. Our Terms and Conditions shall apply in lieu of any terms and conditions of purchasing of the customer, even if, in accordance with the customer's terms and conditions of purchasing, the acceptance of an order constitutes unconditional recognition of such terms and conditions of purchasing. The customer recognizes by accepting our order confirmation that it waives any legal objections derived from its terms and conditions of purchasing.

2. Information; Advice; Features of Goods

- 2.1 Information and advice about the products shall be provided exclusively based on our past experience. The values specified in this regard should be viewed as average values. All data about our products, particularly the depictions, drawings, measurements and performance values and other technical data contained in our offers and printed material are average values and should be considered as approximations.
- 2.2 Any reference to standards, similar technical provisions and technical specifications, descriptions and depictions of the delivered object in our offers and prospectuses and advertising shall only represent specifications of features if we have expressly declared the condition to be a feature of the goods; otherwise, such shall constitute *non-binding* general performance specifications.
- 2.3 Certain features of the goods shall in principle only be considered as warranted by us if we have expressly confirmed this in writing. We shall then only assume a guarantee if we have designated the feature as guaranteed.

3. Samples, Models

The features of finished samples or models shall only form components of a contract if expressly agreed in writing. The customer shall not be entitled to sell or transfer samples or models.

4. Conclusion of Contract; Scope of Delivery; Acceptance

- 4.1 Our offers shall be subject to change. They are requests for orders. Even in ongoing business transactions, a contract shall first come about when we confirm the customer's order in writing. Our order confirmation shall be decisive for the content of the delivery contract. In the case of immediate delivery, our confirmation may be replaced by our invoice.
- 4.2 All covenants, ancillary agreements, warranties and contractual representations must be made in writing. This shall also apply to the rescission of this requirement for the written form.
- 4.3 The assumption of procurement risk shall not consist alone in the obligation to deliver merely a particular class of thing.
- 4.4 In the case of call-off orders or delays in acceptance caused by the customer, we shall be entitled to procure the material for the entire contract and to produce the entire order volume without delay. Any change requests by the customer may therefore no longer be taken into account after the order has been issued, unless such changes have been expressly agreed upon. If we meet change requests by the customer in other cases after an order has been issued, the customer must indemnify us against any additional costs incurred for the change in delivery and pay a reasonable markup on the margin of 30% of the net delivery price for the efforts on our part associated with the change in delivery.
- 4.5 The customer must instruct us in writing in due time before closing the contract about any special requirements placed on our goods.
- 4.6 We shall be entitled to deliver up to 5% more or less units compared to the ordered volume.
- 4.7 If the acceptance or shipment of the goods is delayed due to reasons for which the customer is responsible, we shall be entitled to demand immediate payment of the purchase price or rescission of the contract or to refuse performance and demand compensation in lieu of the entire performance after the establishment and expiration of a 14-day subsequent grace period. The grace period must be established in writing. We shall

not be required to refer once again to the rights from this clause. In the event of a damage compensation claim, the payable damage compensation shall amount to at least 50% of the net delivery price. Both Parties shall reserve the right to prove that a variant amount of damage was incurred or that no damage was incurred.

5. Delivery; Delivery Period; Default in Delivery

- 5.1 Binding delivery dates and periods must be agreed expressly and in writing. We shall make best efforts to meet non-binding or approximate ("about," "approx.," etc.) delivery dates or periods.
- 5.2 Delivery periods shall commence upon receipt of our order confirmation by the customer, though not before all details for executing the order have been clarified and all other conditions to be fulfilled by the customer have occurred; this shall also apply to delivery dates. If the customer has requested changes after the order has been issued, a new delivery period shall commence upon our confirmation of the change. The customer must make us aware when issuing the order of any transport instructions to be observed.
- 5.3 Deliveries may be made prior to the expiration of the delivery period. The day the delivery readiness is notified shall be considered the delivery day; otherwise, the day the goods are shipped shall be considered the delivery day. Unless stipulated otherwise in writing, interest in our performance shall only be considered as cancelled if we have not delivered material parts or if we render delivery in delay.
- 5.4 If we come into default with delivery, the customer must initially establish a reasonable subsequent grace period for us to render performance. If such grace period lapses unproductively, the customer may assert the rights stipulated in §§ 280, 281, 284, 286 and 323 of the Civil Code under the conditions therein. Damage compensation claims due to a breach of duty—for whatever reason—shall only exist in accordance with the provisions of Section 11. If we fail to render the performance prior to a date determined in the contract or within a contractually determined period, the customer may rescind the contract, provided the customer has stipulated in the contract that its interest in the performance is associated with the punctuality thereof.
- 5.5 We shall not be in default if the customer is in default with the performance of obligations towards us, even obligations from other contracts.

6. Right to Self-Delivery; Force Majeure and Other Hindrances

- 6.1 If we do not receive deliveries or performances from our subcontractors or do not receive such properly or in due time due to reasons for which we are not responsible or in the event of *force majeure*, we shall inform our customer thereof in due time in writing. In such event, we shall be entitled to postpone the delivery for the period of the hindrance or to rescind the still unperformed portion of the contract in whole or in part, provided we have met our above duty to provide information and have not assumed the procurement risk. *Force majeure* shall exist in the event of a strike, lock-out, government intervention, energy or raw material shortage, transportation bottleneck through no fault of our own, operational hindrances through no fault of our own, e.g. due to fire, water or damage to machinery and all other hindrances, which, upon objective consideration, have not been negligently caused by us.
- 6.2 If a delivery date or delivery period has been agreed bindingly and is exceeded due to events in accordance with 6.1, the customer shall be entitled after a reasonable subsequent grace period has lapsed unproductively to rescind the still unperformed portion of the contract.

7. Shipping and Passage of Risk

- 7.1 Unless agreed otherwise in writing, we shall ship the goods uninsured, at the risk and expense of the customer. We shall reserve the right to select the means and route of transport, unless agreed otherwise in writing.
- 7.2 The risk of accidental loss or deterioration shall pass to the customer, shipping company, freight agent or other enterprises commissioned to perform the shipment upon the delivery of the goods to be supplied, though at the latest upon leaving our works, warehouse or branch.
- 7.3 If the shipment is delayed due to the fact that we have availed ourselves of our retention right as a consequence of a whole or partial delay in payment or for any other reason for which the customer is responsible, the risk shall pass to the customer at the latest from the date of the notice of delivery readiness.



8. Defect Complaints; Warranty; Breach of Duty

- 8.1 Complaints about any detectable defects must be made by the customer immediately or, at the latest, 12 days after the performance has been rendered, even with respect to any portion of the performance which can be used by the customer; complaints about hidden defects must be made in writing immediately or, at the latest, within the warranty period mentioned in Section 8.6. In the event of defects identifiable on delivery, complaints must also be made to the transport companies, which must be instructed to record the defects. Defect complaints must contain the most detailed description of the defects possible. The failure to raise complaints in due time shall exclude any warranty claims on the part of the customer. If mistakes in the number of units or weight are detectable in accordance with the aforementioned inspection duties upon delivery, the customer must complain to the transport companies about such defects upon receipt of the goods and have the complaint confirmed. The failure to raise complaints in due time shall exclude any warranty claims on the part of the customer in this regard as well.
- 8.2 Before asserting any further rights, the customer must issue without delay a written warning regarding any other breaches of duty, establishing a reasonable period for remedy.
- 8.3 If a defect exists, it shall be remedied, at our choice, except in the event of delivery recourse pursuant to §§ 478 and 479 of the Civil Code, by way of subsequent improvement or replacement delivery free of charge; we must in principle be granted two attempts at subsequent performance. Defects for which the customer itself is responsible and unjustified reclamations shall be remedied by us, if the customer is a merchant, on behalf and at the cost of the customer.
- 8.4 In the event of any defect complaints, payments of the customer may only be retained to a degree which stands in reasonable proportion to the material defects that have appeared. If defect complaints are made unjustly, we shall be entitled to request from the customer compensation for the expenses incurred by us in this regard.
- 8.5 If, by way of exception, the breach of duty is not related to a work performance on our part, rescission shall be excluded if our breach of duty is insubstantial. Rescission shall likewise be excluded if we are not responsible for the breach of duty.
- 8.6 For verifiable material, production or design defects, we shall provide a warranty—unless agreed otherwise in writing or in the case of § 478 of the Civil Code (recourse claim)—for the period of one year, starting from the commencement date of the limitation period stipulated by law.
- 8.7 The above limitation period shall also apply to conflicting claims based on torts and to any claims from damage due to consequential defects.
- 8.8 Further claims of the customer due or in relation to defects or damage from consequential defects, on whatever ground, shall only exist in accordance with the provisions in Section 11, unless the claims entail damage compensation claims from a warranted feature or a guarantee which is intended to assure the customer against the risk of damage from consequential defects. Even in such event, we shall only be liable for typical and foreseeable damage.
- 8.9 Our warranty and the resulting liability shall be excluded if defects and the related damage are based on defective material, faulty design, defective execution or erroneous assembly instructions that cannot be verified. In particular, any warranty and liability shall be excluded for faulty use (particularly in the case of assembly not corresponding to the state of technology or contrary to assembly instructions) or natural wear and tear of goods, disproportionate use or unsuitable operating equipment as well as the consequences of chemical or electrolytical effects not corresponding to foreseen, average standard effects. Defect claims shall not exist in the case of merely minor variation from the agreed or customary conditions or usability. Nor shall defect claims exist in the event of non-reproducible software errors. Our liability in accordance with Section 11 shall not be prejudiced hereby.
- 8.10 Claims of the customer due to the expenses necessary for subsequent performance, particularly transport, travel, labor and material costs, shall be excluded hereby, provided the expenses increase because the delivered object has been subsequently brought to a place other than the place of delivery or the establishment of the customer. This shall not apply in the case of delivery recourse in accordance with §§ 478 and 479 of the Civil Code. In the event of the resale of goods, the customer shall only have recourse claims against us provided the customer has not reached with its buyer any covenants beyond the defect claims stipulated by law.
- 8.11 Material defects must always be recognized in writing.

9. Prices; Payment Conditions; Defense of Uncertainty

- 9.1 All prices shall in principle be in euros ex works or warehouse and do not include packing, freight or any markup for reduced volume or the applicable value-added tax to be borne by the customer or any costs for collateral (e.g. performance guarantees) to be provided by the customer.
- 9.2 Unless agreed otherwise, performances not comprising part of the agreed scope of delivery shall be executed based on our generally applicable price lists.
- 9.3 We shall be entitled to unilaterally increase the compensation in a reasonable fashion (§ 315 of the Civil Code) in the event of any increase in material procurement, wage, ancillary wage and energy costs and costs arising due to environmental regulations, provided more than two months have elapsed between the closing of the contract and the delivery date.
- 9.4 Our invoices shall be payable (without any deduction):
 - in the case the delivery of goods, within 30 days after the invoice date, irrespective of the receipt of the goods;
 - in the case of work and/or services, within 10 days after the invoice date.
 With respect to invoice amounts above € 5,000.00, we shall be entitled either to demand the provision, free of costs and charges for us, of a irrevocable standard letter of credit from a major international bank with registered office in Germany, payable in Germany, or payment in advance at a 3% cash discount. If a cash discount is agreed upon, such discount shall be calculated based on the net amount and shall only be permissible if all other liabilities from the business relation of the customer with us which are older than 30 days have been fulfilled. Payment in the form of bills of exchange shall exclude cash discounts.
- 9.5 The customer shall also be in default in payment without need of warranty:
 - in the case of delivered goods, within 31 days after delivery;
 - in the case of rendered services or work, within 11 days after full performance.
- 9.6 Upon the occurrence of default, default interest shall be computed at a rate of 8% over the respective base interest rate. The date we receive the money or the date of the credit entry onto our bank account shall be considered as the payment date. We shall reserve the right to assert any damage beyond this. Otherwise, default in the fulfillment of an account receivable shall cause all further accounts receivable from the business relation to fall due immediately.
- 9.7 If terms and conditions of payment are not observed or circumstances become known or identifiable—even facts which already existed on the closing date hereof but which were not known to us or need not have been known to us—allowing justified doubt about the creditworthiness of the customer after a due assessment of all circumstances, we shall be entitled, irrespective of any further rights provided by law, to discontinue further work on ongoing orders and the delivery and to demand advance payments for still outstanding deliveries or the provision of collateral satisfactory to us and, after a reasonable subsequent grace period to provide such collateral has lapsed unsuccessfully, to rescind the contract, without prejudice to any further rights provided by law. The customer shall be obligated to compensate all damage arising through the non-performance of the contract.
- 9.8 If payments are deferred and rendered later as agreed, interest shall be owed for the deferment period at a rate of 8% above the base interest rate applicable on the date when the deferment was arranged, without any need to declare the default.
- 9.9 A retention or set-off right of the customer shall only exist in relation to those counterclaims which are undisputed or recognized by non-appealable judgment, unless the counterclaim is based on a breach of material contractual duties by ourselves. A retention right may only be exercised by the customer if its counterclaim is based on the same contractual relation.
- 9.10 We shall only accept offered bills of exchange in exceptional cases upon express agreement and only on account of performance. We shall charge discount expenses from the due date of the invoice until the expiration date of the bill of exchange as well as the costs associated with the bills. The customer must bear any interest and costs associated with discounting or redeeming bills of exchange. In the case of bills of exchange and checks, the day of their redemption shall be considered the payment date. In the event of a refusal by our bank to discount bills of exchange or in the event of reasonable doubt that any bill will be discounted during the term of the bill, we shall be entitled to demand immediate cash payment and that the customer take the bill back.



10. Retention of Title

- 10.1 We shall reserve title to all machinery and goods supplied by us (hereinafter, "reserved goods") until all our claims from the business relation with the customer and any future claims from subsequently concluded contracts are paid. This shall also apply to any balance in our favor if some or all claims have been accepted by us on a current account or the balance has been drawn.
- 10.2 The customer must sufficiently insure the reserved goods, particularly against fire and theft. Claims against the insurance company based on a damage event related to the reserved goods shall be assigned to us in advance in the value of the reserved goods.
- 10.3 The customer shall be entitled to resell the supplied goods in the course of normal business. No other dispositions, including pledges or the granting of chattel mortgages, shall be permitted. If the reserved goods are not paid for immediately upon resale, the customer shall be obligated to resell them subject to a title retention. The entitlement to resell the reserved goods shall no longer be applicable, without need of further action, if the customer suspends payments or is in default with payments to us.
- 10.4 The customer hereby assigns us in advance all claims against the end buyer or third parties, including all collateral and ancillary rights, arising from or in relation to the resale of reserved goods. The customer may not reach any agreement with its buyers which excludes or impairs our rights in any fashion or negates the advance assignment of claims. In the event reserved goods are sold with other objects, the claim against the third-party buyer shall be considered as assigned to us in the amount of the delivery price agreed between us and the customer, unless the amounts attributed to the individual goods can be computed from the invoice.
- 10.5 The customer shall remain entitled to collect the goods assigned to us until we deem otherwise at any time. At our request, the customer shall be entitled to provide us the information and documents necessary to collect assigned claims and, if we do not undertake collection ourselves, to inform its buyer immediately of the assignment to us.
- 10.6 The reserved goods shall be processed for us as producer in the terms of § 950 of the Civil Code, without establishing any obligation on our part. If the reserved goods are processed or inseparably combined with other objects which do not belong to us, we shall acquire co-title to the new thing in the proportion of the invoice value of our goods to the invoice values of the other processed or combined goods. If our goods are combined with other movable objects into a uniform thing which is to be viewed as the main thing, the customer hereby assigns to us in advance the co-title in the same proportion. The customer shall safeguard the title or co-title free of charge for us. The co-ownership rights arising in accordance herewith shall be considered as reserved goods. At our request, the customer shall be obligated at all times to issue us the information necessary to pursue our title or co-title rights.
- 10.7 If the customer integrates claims from the resale of reserved goods into a current account relation existing with its buyers, the customer hereby assigns to us in advance the amount corresponding to the total amount of the claims integrated into the current account relation from the resale of our reserved goods.
- 10.8 If the customer already has claims from the resale of the goods delivered or to be delivered by us to third parties, particularly based on real or virtual factoring, or other arrangements reached, based on which our current or future security interests pursuant to Section 10 could be prejudiced, the customer must notify us thereof immediately. In the case of virtual factoring, we shall be entitled to rescind the contract and to demand the surrender of the previously delivered goods; this shall also apply in the event of real factoring, if the customer is unable in accordance with the contract with the factor to dispose freely of the purchase price of the claim.
- 10.9 In the event of conduct in breach of contract, particularly in the event of default in payment, we shall be entitled to take back all reserved goods, without having to first rescind the contract; the customer shall in this event be readily obligated to surrender the reserved goods if the customer is responsible for a not merely insignificant breach of duty. To determine the status of the goods delivered by us, we may access the business premises of the customer at any time during normal business hours. Taking back the reserved goods shall only constitute a rescission of the contract if we expressly declare this in writing or if so provided by compulsory provisions of law. The customer must inform us without delay of any intervention by third parties with respect to the reserved goods or claim assigned to us.
- 10.10 If the value of the collateral existing on our behalf in accordance with the above provisions exceeds the total amount of secured

claims by more than 10%, we shall be obligated at the customer's request to release collateral of our choice to such degree.

11. Exclusion and Limitation of Liability

- 11.1 We shall not be liable for claims of the customer to damage compensation, irrespective of the legal ground, particularly in the event of breach of duties from the debt relation or torts. This shall not apply if liability is compulsorily prescribed by law, particularly:
- for any intentional or grossly negligent breach of duty on our part or intentional or grossly negligent breach of duty on the part of our legal representatives or vicarious agents; and
 - for the breach of material contractual duties or in the case of any impossibility or substantial breach of duty for which we are responsible;
 - if, in the case of a breach of other duties in the terms of § 241(2) of the Civil Code, the customer can no longer be expected to accept our performance;
 - in the case of injury to life, limb or health, even by our legal representatives or vicarious agents.
 - if we have assumed a guarantee for the conditions of our goods or the existence of an outcome or the procurement risk and in the case of liability in accordance with the Product Liability Act.
- 11.2 In the event of liability due to a slightly negligent breach of material contractual obligations or no-fault liability, particularly in the event of initial impossibility and defects in title, we shall only be liable for typical and unforeseeable defects.
- 11.3 We shall only bear liability based on the assumption of procurement risk if we have expressly assumed the procurement risk by written agreement.
- 11.4 Liability for indirect damage and damage from consequential defects shall be excluded, unless we have breached a material contractual duty or we, our executives or vicarious agents are responsible for an intentional or grossly negligent breach of duty.
- 11.5 Any further liability shall be excluded.
- 11.6 The liability exclusions or limitations pursuant to Sections 11.1 to 11.5 shall apply to the same degree in favor of executives and other employees and vicarious agents as well as to our subcontractors.
- 11.7 Claims of the customer to damage compensation based on the same contractual relation may only be asserted within a preclusive period of one year from the commencement of the limitation period stipulated by law.
- 11.8 No reversal of the burden of proof shall be associated with the above provisions.

12. Place of Performance; Jurisdiction; Applicable Law

- 12.1 The place of performance for all contractual obligations shall be the registered office of our company. The courts competent for the registered office of our company shall be exclusively competent to settle all disputes, as permitted by law. We shall be entitled, however, to take action against the customer at the customer's general place of jurisdiction.
- 12.2 Exclusively the law of the Federal Republic of Germany shall apply to all legal relations between the customer and ourselves, to the exclusion of the UN Sales Convention.

13. Industrial Property Rights and Copyrights; Defects in Title

- 13.1 Unless agreed otherwise, we shall be obligated to perform the delivery within the Federal Republic of Germany free of industrial property rights and copyrights of third parties (hereinafter, "property rights"). If a third party raises legitimate claims against the customer due to any infringement of property rights as a result of goods delivered by us and used as agreed, we shall be liable to the customer as follows:
- 13.2 At our choice and at our own cost, we shall either obtain a license to modify the delivered goods so that the property right is not infringed upon or exchange the goods. If this is not possible for us at reasonable terms and conditions, the customer shall be entitled to the rescission or reduction rights stipulated by law. The customer may not request compensation for expenses rendered in vain.
- 13.3 Our duty to compensate damage shall be determined in accordance with Section 11.
- 13.4 The above obligations shall only exist on our part if the customer has informed us in writing of the claims asserted by third parties, does not acknowledge an infringement and we retain the right to undertake all defensive measures and settlement negotiations. If the customer stops using the delivered goods to mitigate damage or for other reasons, the customer shall be obligated to notify the third party thereof so as to assure that no acknowledgment of a property infringement right is associated therewith.



- 13.5 Claims of the customer shall be excluded if the customer is responsible for the infringement of the property right.
- 13.6 Claims of the customer shall further be excluded if the infringement of the property right is caused by specifications of the customers or by an application not foreseeable for us or because the delivered good is changed by the customer or implemented together with products not delivered by us.
- 13.7 In the event of other defects in title, the provisions of Section 8 shall apply accordingly.
- 13.8 Any further claims or claims other than those stipulated in this Section 13 and in Section 8 on the part of the orderer against the customer or its vicarious agents due to defects in title shall be excluded hereby.

14. Initiation of Insolvency or Composition Proceedings; Suspension of Payments

- 14.1 Any petition for the initiation of insolvency or composition or comparable proceedings filed by the customer or any suspension of payments by the customer not based on retention or other rights shall entitle us to rescind the contract at any time or to make the delivery of the purchased thing contingent on the prior fulfillment of the payment obligation. If the purchased thing has already been delivered, the purchase price shall be due immediately in the aforementioned cases. We shall also be entitled to reclaim the purchased thing in the aforementioned cases and to retain it until the full payment of the purchase price.
- 14.2 The provisions pursuant to Section 14.1 shall also apply if we have accepted checks or bills of exchange towards payment and the drawee or issuer files a petition for insolvency or composition or comparable proceedings and/or suspends its payments.

15. Severability

- 15.1 In the event any provisions hereof are invalid, the remaining provisions shall remain fully effective. That provision which most closely approximates in the invalid provision, as permitted by law shall apply in lieu of any invalid provisions, without need of further action.

Note

Pursuant to the provisions of the Federal Data Protection Act, we hereby note that we use a data-processing system to conduct our accounting and that we will store in this context data received based on the business relation with the customer.

Moosinning, July 6, 2004