

## **1. SCOPE**

All sales by SubCtech GmbH, (hereinafter "SELLER") of any of its own products and/or of any of the products of its manufacturing principals for whom SELLER acts as a sales representative, distributor or Value Added Reseller (VAR), including associated engineering, service and/or field technical support and/or supervision (hereinafter inclusively known as "EQUIPMENT"), to any original purchaser thereof (hereinafter "PURCHASER") are subject to these Terms and Conditions of Sale which shall constitute an integral part of any contract for the purchase of Equipment resulting from Seller's offer of quotation being accepted by the PURCHASER, whether by purchase order, subcontract or performance.

## **2. VALIDITY OF THE TERMS**

All quotations as well as all deliveries and all work are performed on the basis of the Terms of Payment and Delivery of the SELLER. These general terms and conditions are also valid for future contracts even when they were not again agreed on. All possible general terms and conditions of the PURCHASER are contradicted herewith. Different agreements, especially verbal agreements and declarations, need an explicit written confirmation.

## **3. CONCLUSION OF CONTRACT**

All quotations are generally valid for two months. Every order which reaches the SELLER after this period needs to be confirmed in writing. Verbal declarations of our employees and declarations made by telephone are only valid when they are confirmed in writing.

## **4. PRICES**

All prices are, if not differently agreed upon, quoted in EUR, ex works; they do not include packaging, insurance and value added tax.

## **5. PAYMENT**

In the absence of other arrangements the invoice of the SELLER is payable net cash within 21 days of the date of invoice in EUR. In case of default with payment deadline, the SELLER reserves the right to charge interest for delay 2 % over the actual interest rate of the Deutsche Bundesbank.

## **6. CANCELLATION/CHANGES**

Orders are subject to cancellation or change by the PURCHASER only with the prior, written consent of the SELLER and upon terms that will fully indemnify and compensate the SELLER for all loss, cost and expense, including loss of profit resulting from the cancellation or change.

## **7. RETURNS FOR CREDIT**

Returns by the PURCHASER for credit will be accepted only with the prior, written approval of the SELLER and shipment to the factory prepaid, utilizing the original shipping containers or equivalent replacement containers. Returns will be subject to a 20% restocking charge (minimum of €100) plus any additional expenses incurred by the SELLER in restoring equipment to salable condition

## **8. DELIVERY OBLIGATIONS**

a) Delivery dates are good faith estimates only. Stated delivery periods are not binding. Delivery periods are only binding when they are agreed upon and explicitly declared as binding.

b) The SELLER may invoice part deliveries individually.



- c) If dispatch is delayed at the PURCHASER's request, the SELLER will invoice the PURCHASER the thereby resulting storage costs, at least 0,5% of the amount of the invoice for each month, starting one month after the goods are ready to be dispatched. However the SELLER are allowed to dispose of the goods in a different manner after the setting and the expiry of an appropriate extension or to deliver it after an appropriate extension to the PURCHASER.
- d) The carrying out of the delivery obligations of the SELLER requires that the PURCHASER fulfil his obligations properly and in time. When delivery is refused by the PURCHASER or the customer violates his obligation to cooperate on purpose we are entitled to demand compensation for the damage and the additional expenditure from the PURCHASER. In this case, the risk of accidental destruction or accidental decline is with the PURCHASER from the moment the delivery is refused.
- e) Claim for damages of the PURCHASER because of non-fulfilment or delayed fulfilment are impossible, unless the delay occurred on purpose or due to gross negligence.
- f) All deliveries are at the PURCHASER's cost and risk.
- g) Deliveries shall be F.O.B. the SELLER's or SELLER's principal's facility. THE SELLER SHALL NOT BE LIABLE FOR ANY DIRECT, CONSEQUENTIAL, SECONDARY OR INCIDENTAL DAMAGES, HOWEVER ARISING, DUE TO LATE DELIVERY.
- h) Risk of loss of the Equipment shall pass to the PURCHASER upon delivery to the PURCHASER, the PURCHASER's agent or to any common carrier.
- i) The PURCHASER shall inspect all Equipment upon receipt and shall be responsible for reporting damage and negotiating with the carrier.

## 9. LIMITED WARRANTY

- a) The SELLER warrants that all Equipment provided hereunder, with the exception of VAR components which are clearly labelled as to the original manufacturer, will be free of defects in material and workmanship and will perform in accordance with SELLER's Specifications for a period of 24 months from date of shipment by the SELLER (as required by European law). The warranty of the VAR components shall be that of the original manufacturer.
- b) The SELLER, at its sole option, will repair or replace, F.O.B. SELLER's plant, Equipment found to be defective, but the SELLER will not be responsible for freight from PURCHASER to SELLER's plant or for the removal and reinstallation labour or for the resolution of general systems problems outside of the Equipment specification applicable to SELLER's Equipment.
- c) The SELLER will use its best efforts to correct design defects but reserves the right to refund the PURCHASER the full purchase price to the extent "proven" design defects cannot be corrected within a reasonable time.
- d) THIS LIMITED WARRANTY IS CONTINGENT ON ALL OF THE FOLLOWING CONDITIONS BEING MET:
- 1) The PURCHASER has notified the SELLER within five (5) days of discovery of any claim under this warranty;
  - 2) The PURCHASER has returned the defective Equipment, freight prepaid, in its original container or an equivalent one to the SELLER and the PURCHASER has used its best efforts to pack it properly;
  - 3) The SELLER's test of the defective Equipment, or investigation into the circumstances, does not disclose:
    - (a) any cause of malfunction due to the PURCHASER's or any third person's wrong application, misuse, neglect, improper installation, incorrect testing or unauthorized attempt to repair;
    - (b) any damage caused by improper handling, shipment or storage; any failure of the PURCHASER to assign competent/trained personnel to install, test or operate Equipment; or,
    - (d) any accident, fire, flood, weather condition, electric power surge/loss or any other occurrence beyond Seller's reasonable control.



## **10. LIMITS OF LIABILITY AND INDEMNIFICATION**

The limited warranties of the SELLER set forth herein are in lieu of, and PURCHASER hereby waives, all other warranties, express or implied, and all other obligations or liabilities on the part of the SELLER, which neither assumes, nor authorizes others to assume for it, any other obligation or liability in connection with the warranted Equipment or any part thereof. THE SELLER HEREBY EXCLUDES FROM ANY ORDER FOR EQUIPMENT THE IMPLIED WARRANTY OF MERCHANTABILITY. The PURCHASER and the SELLER agree that there are no warranties which extend beyond the description of the Equipment in SELLER's offer of quotation. THE SELLER WILL NOT BE LIABLE FOR INCREASED MANUFACTURING/PROCESS COSTS, LOSS OF PROFIT, LOSS OF BUSINESS, OR ANY OTHER CONSEQUENTIAL, SECONDARY OR INCIDENTAL DAMAGES, HOWEVER ARISING.

## **11. FORCE MAJEURE**

The SELLER shall not be responsible to the PURCHASER, or to any third party, without limitation, for any direct, incidental, secondary or consequential damages, arising out of the non-performance, performance or delay in performance of the order resulting from this quotation caused by events beyond SELLER's reasonable control, including, but not limited to: acts of God; acts or omission of any Government in its sovereign or contractual capacity; wars; riots; strikes; accidents, unavailability of suitable and sufficient materials, fuel or manufacturing capacity; delays in transportation or communication; fires; floods; epidemics or quarantine restrictions; or customs delays.

## **12. PROPRIETARY RIGHTS**

The PURCHASER agrees that the SELLER and/or the SELLER's principals retain proprietary rights in and to all product data, designs, engineering details, discoveries, patents and trade secrets relating to the Equipment and its associated firmware and software, including those resulting from the application of the Equipment for the PURCHASER's use. The Equipment is offered for sale, and is sold by the SELLER in every case, on the condition that such sale does not convey any license, expressly or by implication, estoppel, or otherwise, to manufacture, duplicate, or otherwise copy or reproduce any of the Equipment or related firmware and software.

## **13. SAFETY NOTICE**

The PURCHASER acknowledges that PROCESS/MANUFACTURING SYSTEMS IMPROPERLY INSTALLED, MAINTAINED OR OPERATED CAN POSE SERIOUS AND DANGEROUS THREATS TO WORKER SAFETY, ENVIRONMENTAL INTEGRITY AND PRODUCT/PROCESS QUALITY. The SELLER's Equipment is provided with various safety, performance and operating limits, designs and devices which, if disconnected, altered, tampered with or changed by PURCHASER, PURCHASER's agents or other acting on PURCHASER's behalf, with or without PURCHASER's knowledge, will become PURCHASER's sole risk and responsibility and such actions will absolve the SELLER of any obligations and liabilities with respect to the function of such limits, designs and devices, and further, THE PURCHASER SHALL INDEMNIFY AND HOLD SELLER HARMLESS FOR ANY DAMAGES DUE TO SUCH ACTION OR NONACTION.

## **14. COMPLIANCE**

The SELLER will be responsible for compliance with applicable Federal, State, Province or Local governmental safety, environmental, licensing, permitting or performance statutes, ordinances, rules or regulations only to the extent specifically noted on the face of the SELLER's quotation or the PURCHASER's order, and then only with respect to such statutes, ordinances, rules or regulations which are published and in force as of the date of the PURCHASER's order.

## **15. REPRESENTATIONS BY PURCHASER**

The PURCHASER acknowledges that the SELLER has based all quotations, system specifications, engineering designs, models and other plans on the data and information provided by the PURCHASER. The PURCHASER certifies that all information and data provided to the SELLER is true and accurate to the best of its knowledge. The PURCHASER acknowledges that the SELLER is not responsible for any error, mistake, miscalculation or misrepresentation, whether

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intentional or unintentional, made by the PURCHASER in the dissemination of information to the SELLER that materially affects the suitability or performance of the Equipment.

#### **16. RESERVATION OF OWNERSHIP RIGHTS**

The delivered goods remain property of the SELLER until the payment in full of all claims outstanding at the time of delivery.

#### **17. PLACE OF PERFORMANCE AND JURISDICTION, APPLICABLE LAW**

The place of performance for delivery and for all obligations of the PURCHASER is Kiel. The place of jurisdiction for both parties is Kiel, provided the PURCHASER is a merchant, a statutory corporation or a corporation with separate estate. The laws of the Federal Republic of Germany are exclusively applicable to all contractual relationships.

#### **18. ULTIMATE END USERS**

The PURCHASER shall obtain a written and signed acknowledgment from any Ultimate End User of the Equipment that it

- 1) understands and agrees to these Terms and Conditions;
- 2) shall comply with all requirements imposed upon the PURCHASER; and
- 3) waive any right of subrogation that may allow them to assert the rights of the PURCHASER

