

Terms of Sale

1. General provisions and Scope of Application

These general terms and conditions of sale and supply (hereinafter "Terms") are an integral part of the contract and apply to all offers, products and services (hereinafter "Products") rendered by QUBIG GmbH (hereinafter "QUBIG") to any buyer (hereinafter "Buyer") (QUBIG and Buyer, jointly "Parties"). QUBIG provides its Products exclusively on the basis of the Terms.

2. Order, Quotation and Confirmation

2.1. The contract is concluded upon the issuance of an express written order confirmation from QUBIG to the Buyer (hereinafter "Contract"). The mere placement of order by the Buyer (hereinafter "Order"), even on the basis of a quotation of QUBIG, does not amount to the conclusion of the Contract, which requires the express written confirmation of QUBIG (hereinafter "Confirmation").

2.2. The quotation issued by QUBIG (hereinafter "Quotation") outlines the Products, the extent of the work that will be carried out by QUBIG and the processing time. All Quotations are non-binding and subject to the Confirmation of QUBIG.

2.3. Both the Quotation and the Confirmation issued by QUBIG are based on the specific Product requested by the Buyer. The extent of the obligation of QUBIG is determined solely by QUBIG's Confirmation. The Buyer shall clearly specify all the technical specification of the Product requested and shall promptly inform QUBIG of all the peculiarities of the Product. If the Buyer fails to communicate to QUBIG all the information necessary for the development and production of the Product, QUBIG shall not be liable for any malfunctioning of the Product or for its unsuitability for its proposed use.

2.4. If the Buyer cancels or withdraws the Order after its Confirmation without the express prior written consent of QUBIG, the Buyer shall pay to QUBIG a compensation amounting to 25% (twenty five per cent) of the Price. QUBIG reserves the right to prove and claim a higher amount of damages in addition to such compensation.

3. Price and Payment

3.1. The invoice issued by QUBIG (hereinafter "Invoice") shall have to be paid within 30 (thirty) days from the conclusion of the Contract (hereinafter "Payment"). Any bank charge shall be borne by the Buyer. All Prices are in Euro (EUR).

3.2. The price set by QUBIG for Products delivered ex warehouse Munich does not include the value-added tax applicable at the time of issuing of the Invoice and customs charges (hereinafter "Price"). The Price covers only the delivery described in the Confirmation (hereinafter "Delivery"). QUBIG determines the Price based on labour costs, exchange rates and price of raw materials at the time of the Confirmation. If any of these parameters changes by the time of Delivery, QUBIG reserves the right to adjust the Price

accordingly. QUBIG may also adjust the Price if the Product or its quantity differs from the one specified in the Quotation.

3.3. Under no circumstances may the Buyer reserve the right to refuse Payment or detain the Products. No amount due by the Buyer to QUBIG may be offset with an amount due to the Buyer without QUBIG's prior express written consent.

3.4. In case of late Payment, the Buyer has to compensate QUBIG for the delay. In addition to the Price, QUBIG may charge the Buyer 10% of the Price for every month of delay, unless a higher amount of damages can be proven by QUBIG.

3.5. If the Buyer is in delay of Payment, all QUBIG's claims will become due at once. In addition, QUBIG may interrupt any outstanding work and postpone agreed Deliveries accordingly.

3.6. QUBIG is entitled to terminate the Contract in the event that Buyer is in default of Payment by more than thirty (30) days.

3.7. At its sole discretion, QUBIG may require advance Payment or the posting of satisfactory security from the Buyer and may withhold Delivery until the Buyer makes such Payment or posts such security. QUBIG reserves the right to decline cheques and bills of exchange as means of Payment.

4. Packaging and Delivery

4.1. The Price set by QUBIG in the Confirmation includes processing fees for packaging, transport costs as well as handling costs. The costs for returning the Package to QUBIG shall be charged separately and shall be defined in a specific agreement reached between the Parties.

4.2. Should the Buyer request an express Delivery, it shall do so in writing before the Confirmation. In its request, the Buyer shall specify the timing of the express Delivery. QUBIG retains the right not to accept the proposed express Delivery schedule. The express Delivery will be charged to the Buyer in the Invoice and shall correspond to the rates applied for the Delivery by the carrier.

4.3. QUBIG shall provide transportation insurance at the Buyer's request and in its favour and at its full expense.

4.4. QUBIG shall not be held liable for any damage occurred to the Product during Delivery or for any mishandling.

5. Delivery

5.1 QUBIG ascertains Deliveries based on the current circumstances and consequently all Deliveries are to be regarded as approximate. Delivery dates and periods (hereinafter "Delivery Times") are only binding if designated as binding by QUBIG. If Delivery periods are specified, these will start to run upon conclusion of the Contract and once all cooperating duties of the Buyer have been fulfilled (e.g. Payment of the Invoice, providing documents and communicating the required data, permits, clearances etc.). Any subsequent change requested by the Buyer, shall lead to a reasonable postponement of the Delivery Times.

5.2 The Buyer shall accept the Delivery of the Product, even if the Product show defects or damages. Once

the Buyer has received the Product, the Delivery Time will be considered met. Partial Delivery is admissible.

5.3. If Delivery is delayed due to unforeseeable events outside QUBIG's sphere of influence (e.g. force majeure, strike, lockout, interruption of operations, shortage of important raw materials, sabotage, delay in the supply of important raw materials and components, etc.), Delivery Times shall be extended accordingly. This provision applies also in case those unforeseeable circumstances occur during the time when QUBIG is already in default. Those circumstances release QUBIG from any liability for their entire duration and, if they result in an impossible performance, even release QUBIG from Delivery.

5.4. The Buyer shall not terminate the Contract due to late Delivery and any claim arising from the late Delivery is excluded and contractually waived.

5.5. Deliveries are generally not carried out franco domicile.

5.6. In the event of late Delivery by QUBIG, the Buyer may specify an adequate grace-period of at least 30 (thirty) days in writing. Only if this period has elapsed without Delivery, the Buyer may terminate the Contract through a written declaration and demand damages in lieu of performance or reimbursement of expenses, insofar as the Buyer is entitled to it pursuant to the Law. The Buyer will be entitled to claim this only if the Buyer has fully, properly and timely met his duties to cooperate.

5.7. Before the Buyer returns any Products, he shall always notify QUBIG in advance in writing of the date of return and of any other useful data.

5.8. Before Delivery, QUBIG may carry out technical modifications that do not affect the functionality of the Product, even without previously consulting the Buyer.

6. Passing of Risk

Risk will be transferred to the Buyer upon Delivery of the Product to the carrier. This provision applies also in case of partial Delivery. QUBIG warrants that at the time of passing of the risk the Product is of the agreed quality and corresponds to the specifications agreed in the Confirmation.

7. Liability

7.1 QUBIG is liable only for defects or damages caused by QUBIG with wilful misconduct or gross negligence. In case of gross negligence, the liability of QUBIG shall be limited to the foreseeable damage typical of the Contract involved. The amount of the typical foreseeable damage of the Contract shall be limited to the Price or, at the most, correspond to EUR 100,000 (EUR one hundred thousand)

7.2. QUBIG shall not be liable for usual wear and tear, materials provided, processing, damage resulting from improper storage, installation or operation, insufficient maintenance, modification or repair not authorized by QUBIG in writing. QUBIG shall not be held liable if the Product has been modified, improperly installed, maintained, repaired, used or has been exposed to improper environmental conditions.

7.3. QUBIG shall not be held liable for remote damages, losses consequential to defects, loss of profits and economic losses of any kind sustained by the Buyer or by third parties.

7.4. Immediately upon receiving the Delivery, the Buyer shall inspect the package and the Product and indicate in writing on the official delivery or collection document whether the Product is affected by any damage or defect resulting from shipment or transportation.

7.5. The Buyer shall inspect the Product promptly after receiving the Delivery for damages, defects and non-conformances. The Buyer shall give QUBIG written notice of the existence of the damage or the defect of the Product within ten (10) days from the receipt of the Product. A failure by the Buyer to give such written notice within 10 (ten) days will constitute an absolute and unconditional waiver of such claim. QUBIG may supply new Products or refund the Price at its sole discretion.

7.6. The Buyer shall give notice of a defect or of a damage of the Product immediately upon discovery in detail and in writing to QUBIG. In case of defects of quality, the notice must include a detailed description of the circumstances under which they have occurred and of their relevant effects. If the problem notified does not constitute a defect or a damage, the Buyer shall have to bear the cost of delivery and repair or change carried out by QUBIG.

7.7. If QUBIG, at its sole discretion and in good faith, recognizes the existence of a defect of the Product, it shall repair the defect. The cost of the repair of a defect, which was caused only by QUBIG alone, shall be borne by QUBIG. The cost of the repair sustained by QUBIG shall only extend to the portion of the defect caused uniquely by QUBIG. If the defect was caused by the Buyer (e.g. incorrect data and measurements, etc.) or any other third party, QUBIG shall not have to pay for the repair nor for the delivery and shipping of the defected Product.

7.8. The time of the statute of limitation for any liability claim against QUBIG amounts to 12 (twelve) months from the Delivery; consequently, rights and claims based on defects or damages of the Product will become time-barred 12 (twelve) months after the Delivery.

8. Warranty for Defects

8.1. QUBIG warrants that the Product conforms to the specifications, quality standards and measurements agreed between the Parties in the Confirmation. QUBIG has based its Product on the information provided by the Buyer, the Buyer shall therefore make sure that all the information provided are accurate. QUBIG makes no warranty for the results the Buyer may obtain while using the Product. QUBIG makes no representation, whether express or implied, regarding the merchantability or suitability of the Product. The Buyer shall check carefully and on its own responsibility whether the Product is suitable for the use intended by the Buyer or by third parties, in particular in connection with other components and systems. The Buyer shall carefully examine possible dangers in the use of the Product and eliminate any risk.

8.2. QUBIG shall not be held liable, whether by the Buyer or by third parties, for any circumstance which exudes the warranties and representations described in these Terms.

8.3. All representations and warranties provided by the applicable law are expressly excluded and contractually waived by the Parties.

9. Retention of Property

9.1. QUBIG retains property on any Product until its full Payment.

9.2. If the Buyer is in delay of Payment or if the Buyer becomes insolvent, QUBIG may retrieve the Products, also by entering the premises of the Buyer or third parties.

9.3. The Buyer must handle the Products subject to retention of property with the utmost care. In particular, the Buyer must provide insurance against fire, water damage and theft at its own expense. QUBIG is entitled to demand proof of insurance coverage. Should any maintenance work be required, the Buyer shall have these carried out promptly and at its own expense.

9.4. Pledge, lien, lease and other means of assignment, conveyance or demise of the Products done by the Buyer are inadmissible as long as QUBIG retains property on the Products. 9.5. The Buyer is entitled to resell and process the Products as long as the Buyer has provided full Payment of the Products to QUBIG.

9.6. If the Buyer resells the Products, while QUBIG still retains property on them, the Buyer shall assign to QUBIG the portion of the Price still due (including VAT), regardless of whether the Product has processed. QUBIG herewith accepts this assignment. If the Buyer is in delay with this Payment, QUBIG may claim the outstanding portion of the Price from the third party debtor. QUBIG may request the Buyer to collect the outstanding portion of the Price in the name of QUBIG and at the expense of the Buyer. The Buyer has to forward immediately any collected portion of the Price to QUBIG. The Buyer shall submit to QUBIG in writing all useful information about the assigned claims. At the request of QUBIG, the Buyer has to notify the third party debtor in writing of the assignment and provide proof of it to QUBIG. If, for any reason, the Products are combined with other goods that are not owned by QUBIG, the Buyer or the third party debtor shall give QUBIG a co-ownership share in the new item, which shall be proportionate to the Price of the retained Product at the time of processing.

9.7. The Buyer shall notify QUBIG immediately in writing of any enforcement measures regarding the Products carried out by third parties on the Products subject to the retention of property of QUBIG. The Buyer shall promptly inform QUBIG and forward any document concerning the enforcement. The Buyer shall immediately inform in writing the third party about the retention of property of QUBIG.

9.8. If the Buyer violates its duties regarding the retention of title or if the Buyer fails to treat the retained Products with the utmost care, QUBIG may demand the return of retained Products. In addition, QUBIG may demand from the Buyer a compensation amounting to 50% (fifty per cent) of the Price, in addition to the Price. QUBIG reserves the right to prove and claim a higher amount of damages in addition to such compensation. This claim does not result in the termination of the Contract, unless QUBIG declares so in writing.

10. Taxes

The legally applicable value-added tax is not included in the Price and will be shown separately in the Invoice. Custom charges are to be borne by the Buyer. QUBIG shall not be liable for any other tax or duty of any kind, unless specifically and mutually agreed between the Parties. The Buyer shall indemnify and hold harmless QUBIG for any claim made by third parties deriving from a breach of tax regulations made by the Buyer. If those regulations impair the performance of the Contract, QUBIG is released from its duty of performance.

11. Intellectual Property Rights

11.1. QUBIG is a registered CTM and is a property of QUBIG. Any unauthorized use of the QUBIG trademark or other related materials is expressly prohibited and constitutes a violation of copyright, trademark law or other industrial property rights.

11.2. QUBIG retains all property rights and copyrights for pictures, drawings, calculations, films, templates, slides, copies and other materials that were included in the Quotation, Offer, Confirmation or forwarded to the Buyer pursuant to the Contract. Those data shall not be made available to third Parties nor may they be used by the Buyer outside of the scope of application of the Contract, without the prior express written consent of QUBIG. Those data shall be considered as non-binding and for information purposes only, even if included or referred to in the Offer, Confirmation or in any other document issued by QUBIG.

11.3. In case of breach of this provision, QUBIG shall be entitled to claim compensation for damages and seek any appropriate court action against the Buyer and third Parties.

12. Miscellaneous

12.1. Any Contract or commercial relation between the Parties shall be construed and interpreted exclusively pursuant to the laws of the Federal Republic of Germany (hereinafter "Law"). The terms of the UN Convention on Contracts for the International Sale of Products (CISG) shall not apply.

12.2. Any dispute arising from the Contract shall be brought before the court of Munich, Germany. The court of Munich shall have exclusive jurisdiction and venue on all disputes arising from the Contract.

12.3. The place of performance of the Parties' mutual obligations is Munich, Germany.

12.4. If any provision of the Terms is or becomes invalid or unenforceable, the other provisions of the Terms shall remain valid and effective. The invalid provisions shall be interpreted and/or substituted with the provision which best represents the economic purpose intended by the Parties. No agreement or statement shall modify the Terms, unless those amendments and modifications are made in writing, signed by QUBIG and specifically identified as an amendment to the Terms. Ancillary agreements shall be applicable to QUBIG only if agreed by QUBIG in writing. The Buyer's business terms and conditions will not apply, even if QUBIG has not expressly rejected them. The Terms will be deemed acknowledged by the Buyer upon receipt of the Confirmation.

Stand: 01.11.2018