

Delivery Terms and Conditions

(Status: 1 June 2014)

Exide Technologies GmbH

I. Scope, General

- 1.) Our deliveries are made exclusively on the basis of these Delivery Terms and Conditions. We only acknowledge terms and conditions of delivery of Customer deviating from or inconsistent with these Delivery Terms and Conditions if we have agreed to them in writing. Our Delivery Terms and Conditions also apply should we unreservedly deliver to Customer in the knowledge of terms and conditions of delivery of Customer deviating from or inconsistent with our Delivery Terms and Conditions.
- 2.) All agreements concluded between us and Customer for the purpose of executing this contract are set out herein in writing.
- 3.) Our Delivery Terms and Conditions apply only with respect to entrepreneurs in the meaning of § 310 paragraph 1 BGB (*German Civil Code*).
- 4.) Our Delivery Terms and Conditions also apply for all future transactions with Customer even then if they are not again explicitly agreed.
- 5.) The term "damage compensation claims" in these Delivery Terms and Conditions also covers claims for compensation of futile expenditure.
- 6.) We are entitled to assign and transfer any and all account receivables or claims.

II. Quotation, Quotation documents

- 1.) Our quotation is non-committal. Orders are first deemed as accepted when we have confirmed them in text form or in simple electronic form. The respective order confirmation is thereafter decisive for defining the order contents.
- 2.) We reserve all proprietary rights and copyrights to illustrations, drawings, calculations and other documents. This applies also for written documents designated as "confidential". Customer may not disclose these to third parties before obtaining our explicit written consent.
- 3.) Customer has the non-exclusive right to use standard software and firmware with the agreed performance characteristics in unchanged form and on the agreed devices. Customer may produce one backup copy of the standard software without explicit agreement.

III. Prices, Payment conditions

- 1.) Unless given otherwise from the order confirmation, our prices apply "ex-works" on the day of delivery and exclusive packaging.
- 2.) Our prices do not contain the statutory VAT; this is shown separately on the invoice with the amount applicable on the billing date.
- 3.) The deduction of discounts is subject to separate agreement.
- 4.) Unless given otherwise from the order confirmation, the purchase price is due for payment within 30 days following invoice date. If Customer is in default with payment, we are entitled to demand default interest of 8 percentage points over the basic rate. We are entitled to demand higher interest for other legal reasons; however, Customer may evidence that the payment default did not cause any damage or significantly less damage than asserted. The right to assert maturity interest pursuant to §§ 352, 353 HGB (*German Commercial Code*) remains unaffected.
- 5.) Customer is only entitled to offsetting or withholding rights if his counterclaim is established with lawful finality, or is uncontested or acknowledged by us.
- 6.) If our Customer is in default with payment or in the event of cheque or direct debit protests or if Customer is in breach of contract otherwise, then we can withdraw from all contracts and demand damage compensation and/or assert our simple, extended and prolonged retention of title, recover possession of delivered goods, demand collateral, realise provided collateral, declare all outstanding payments as due and only execute still outstanding deliveries against advance payment.
- 7.) We must be immediately notified in writing of changes of address, changes of ownership, company legal form or other circumstances of our Customer affecting the economic relationship. We are entitled to the rights from § 321 BGB (defence of insecurity) if it becomes apparent after contract conclusion that our entitlement to payment is at risk due to insufficient ability of our Customer to perform. In such a case we have the right to claim payments or collateral for all entitlements from all existing contracts and to refuse fulfilment of all existing contracts until advance payment is made or collateral is provided.

IV. Delivery time

- 1.) Commencement of the delivery time we state presupposes clarification of all technical issues and the timely and duly proper fulfilment of all obligations of Customer. The beginning of the delivery time postpones accordingly if these prerequisites are not fulfilled in good time. The plea of unfulfilled contract remains reserved.
- 2.) If Customer is in default with acceptance or breaches other cooperation duties, we are entitled to demand compensation of the damage we incur as a result, including any additional expenditure. Further-reaching claims remain reserved. If at the wish of Customer shipment or delivery is delayed by more than one month after readiness for shipment has been notified, then for each further started month Customer can be billed for storage costs amounting to 0.5% of the delivery item price, but at most 5% in total. This does not prejudice the right of the contract parties to evidence higher or lower storage costs.
- 3.) Inasmuch as the prerequisites of paragraph 2 are given, the risk of coincidental destruction or coincidental deterioration of the purchase item passes to Customer at the time at which Customer defaults with acceptance.
- 4.) In the case that we are in default due to reasons for which we are answerable, then if Customer at least credibly demonstrates that he has suffered damage as a result, Customer can demand flat rate damage compensation for each full week of default amounting to 0.5%, but at most 5% of the price for that portion of the delivery which could not be taken into operation for its intended purpose because of the delay.
- 5.) Damage compensation claims of Customer going beyond the limits stated in paragraph 4 are excluded in all cases of late delivery, also after a due period set for us to perform has expired; this does not apply if liability is mandatory in cases of wilful conduct, gross negligence or injury to life, body or health. Customer's statutory right of withdrawal remains unaffected.

- 6.) We shall not be liable for delayed delivery caused because our suppliers deliver incorrectly or late through no fault on our part.
- 7.) Force majeure (e.g. mobilization, war) or similar occurrences (e.g. strike, lockout, orders decreed by public authorities) postpone commencement of the delivery time accordingly.

V. Passage of risk, Packaging costs

- 1.) Unless given otherwise from the order confirmation, delivery is agreed as "ex-works".
- 2.) Unless stipulated otherwise in the order confirmation, transport packaging and all other packagings pursuant to the Packaging Ordinance are non-returnable; exempt from this are reusable palettes. Customer is obligated to dispose of packagings at his own cost.
- 3.) We insure deliveries against the usual transportation risks at the wish and expense of Customer.

VI. Material defects

- 1.) Customer must have complained of a material defect to us in writing immediately upon receiving delivery as a prerequisite for the assertion of claims for defects (§§ 377, 378 HGB). Insignificant deviations from the agreed characteristics, insignificant impairments of usability, natural wear and tear or damages arising after the passage of risk due to erroneous or negligent treatment, overloading and unsuitable operating resources or due to exceptional external influences not covered by the contract are not considered to be material defects. If Customer or third parties undertake inexpert changes and/or maintenance, no claims for defects are acknowledged for these or for the consequences arising as a result. Customer may not refuse to accept deliveries on the grounds of insignificant defects.
- 2.) Inasmuch as a purchase item contains a material defect, then we are entitled at our own discretion to either remedy the defect or make replacement delivery.
- 3.) We bear the costs necessary for defect remedy only up to 2/3 of the net purchase price. Claims of Customer due to the expenditure necessary for subsequent fulfilment, especially transport costs, personnel travel costs, labour and material costs, are excluded inasmuch as the expenditure increases because the delivery item has been subsequently brought to a place other than the business establishment of Customer, unless such a relocation is consistent with the intended purpose of use.
- 4.) If the subsequent fulfilment pursuant to paragraph 2 fails, whereby we are entitled to undertake two attempts to subsequently remedy a defect, then Customer is entitled to withdraw from the contract or demand that the purchase price is reduced (reduction). Customer cannot demand compensation for futile expenditure.
- 5.) Customer has no claim against us due to a material defect going beyond or other than those claims regulated in this section. Damage compensation claims are subject to Art. VIII (Other damage compensation claims).
- 6.) Customer only has rights of recourse to us pursuant to § 478 BGB inasmuch as Customer has not concluded any agreements with his buyer going beyond the statutory claims for defects in the case of subsequent fulfilment. Paragraph 3 applies correspondingly for the amount of recourse entitlement of Customer against us.
- 7.) Claims for material defects are statute-barred after 12 months reckoned as from passage of risk. This period does not apply if the law stipulates longer periods pursuant to §§ 438 paragraph 1 no. 2 (buildings and items used for buildings), 479 paragraph 1 (recourse entitlement) and 634a paragraph 1 no. 2 (building defects) BGB, or in case of wilful conduct, malicious concealment of the defect or the lack of guaranteed characteristics.

VII. Impossibility, Contract adjustment

- 1.) Customer is entitled to demand damage compensation if delivery is impossible, but only then if we are answerable for the impossibility. However, the damage compensation entitlement of Customer is limited to 10% of the value of that portion of the delivery which cannot be taken into operation for its intended purpose because of the impossibility. The right of Customer to withdraw from the contract remains unaffected.
- 2.) The contract can be adjusted appropriately in the event that occurrences in the meaning of Art. IV paragraph 7 severely change the economic significance of the delivery or influence our business operations or if it transpires that essential assumptions that have become fundamental to the contract are erroneous. We are entitled to withdraw from the contract if such an adjustment should be economically unreasonable.

VIII. Other damage compensation claims

- 1.) Customer has no entitlement to claim damage compensation, irrespective of legal grounds, especially claims due to breach of duties from the obligatory relationship and/or tortious acts. This does not apply if and inasmuch as liability is mandatory, e.g. according to product liability law, in case of wilful conduct or gross negligence or due to injury to life, body or health, or due to an assurance that a defect does not exist or in the case of breach of essential contract duties. Damage compensation for the breach of essential contract duties is, however, limited to the foreseeable damage typical for the type of contract, but excepting where wilful conduct or gross negligence is the case or if liability is founded in injury to life, body or health or due to the assurance that a defect does not exist.
- 2.) In the same extent to which we are not liable for damage compensation or our liability is limited, then this shall apply also for claims against our employees, workers, representatives and vicarious agents.

IX. Retention of title

- 1.) We reserve ownership of the purchase item until all payments from the business relationship with Customer are credited to our account. As far as we have agreed with Customer that the purchase price shall be paid by means of bill / cheque, the retention of title extends to the encashment of the accepted bill by Customer and shall not extinguish with the credit note of the cheque received. We are entitled to recover possession of the purchase item in the event of conduct by Customer contrary to contract, especially default with payment. Recovery of the purchase item by us does not constitute withdrawal from the contract, unless we explicitly so declare in writing. Attachment of the purchase item by us invariably constitutes a withdrawal from the contract. We are entitled to realise recovered items; whereby the realisation proceeds shall be credited against Customer's liabilities – minus appropriate realisation costs.
- 2.) Customer is obligated to treat the purchase item with due care and is especially obligated to insure the purchase item sufficiently at his own cost for its value as new against damage by fire, water and theft.
- 3.) Customer must notify us immediately in writing of any attachments or interventions by third parties so that we can raise complaint pursuant to § 771 ZPO (*Code of Civil Procedure*). Customer shall be liable to us for losses we incur because the third party is unable to reimburse us for the costs of pursuing a complaint in or outside a court of law pursuant to § 771 ZPO.
- 4.) Customer is entitled to resell the purchase item in orderly business; however, he herewith assigns to us all claims against his buyers or third parties arising for him from the resale up to the final invoiced amount (including VAT) of our claim, and this irrespective of whether the purchase item has been resold with or without further processing. Customer remains entitled to collect these receivables also after the assignment. Our entitlement to collect the receivable ourselves remains unaffected. However, we obligate ourselves to not collect the receivable for as long as Customer meets his payment obligations from the agreed proceeds, is not in default with payment and especially for as long as Customer has not filed for bankruptcy proceedings or does not discontinue payments. If this is the case, however, we can demand that Customer notifies to us the assigned receivables and their debtors, makes all statements necessary for collection, hands over the pertaining documents and promptly notifies the assignment to the debtors (third parties).
- 5.) Customer invariably processes or compounds the purchase item for us. If the purchase item is processed or compounded with other items that do not belong to us, then we acquire co-ownership in the new item in the ratio of the purchase item value (final invoiced amount including VAT) to the value of the other processed or compounded items at the time of processing or compounding. The item arising from processing or compounding is otherwise subject to the same conditions as the purchase item delivered under reservation of title.
- 6.) We obligate ourselves such that on demand by Customer we shall release collateral to which we are entitled inasmuch as the realisable value of our collateral exceeds the collateralised claims by more than 20%; we shall select the released collateral at our own discretion.

X. Industrial property rights and copyrights; Deficiencies in title

- 1.) Unless agreed otherwise, we are only obligated to perform delivery unencumbered by industrial property rights and third party copyrights (hereinafter: "protected rights") in the country of the place of delivery. If a third party raises justified claims against Customer due to breach of protected rights by virtue of using deliveries we performed contractually, then we are liable to Customer within the due periods specified in Art. VI no. 7 as follows
 - a.) As we choose and at our own cost we shall either obtain a usage right for the deliveries in question, change them so that the protected right is not violated or replace said deliveries. If it is impossible for us to achieve this to reasonable conditions, then Customer shall be entitled to exercise the statutory rights of withdrawal or reduction.
 - b.) The obligation of the supplier to compensate damages is subject to Art. VIII.
 - c.) The aforesaid obligations only exist inasmuch as Customer immediately informs us in writing of claims raised by third parties, does not acknowledge an obligation and if all defence measures and settlement negotiations remain vested with us. If Customer discontinues use of the delivery in order to minimise damage or for other important reasons, then he is obligated to inform the third party that discontinuation of use does not imply acknowledgement of an infringement against a protected right.
- 2.) Customer has no claims inasmuch as he is answerable for infringing against a protected right.
- 3.) Customer also has no claims inasmuch as the protected right is breached due to special stipulations of Customer, due to a use we could not have foreseen or because Customer changes the delivery or deploys it in conjunction with products not delivered by us.
- 4.) The provisions of Art. VI no. 6 apply otherwise for the claims of Customer regulated in no. 1a) in the case of infringements against protected rights.
- 5.) The provisions of Art. VI apply correspondingly in the case of other deficiencies in title.
- 6.) Customer has no further claims against us and our vicarious agents for deficiency in title going beyond or other than those regulated in this Art. X.

XI. Jurisdiction, Place of fulfilment

- 1.) Our registered place of business is exclusive place of jurisdiction if Customer is a merchant under German law. However, we are also entitled to bring suit against Customer before the court of law with jurisdiction over his place of residence.
- 2.) Unless given otherwise from the order confirmation, our registered place of business is place of fulfilment.

XII. Applicable law

The contractual relationship is subject to the laws of the Federal Republic of Germany with the exception of the collision and reference norms of German international private law and the norms of the UN Convention on Contracts Concerning the International Sale of Goods dated 11 April 1980 (CISG).

Only the German version shall apply in the event of legal dispute.