

Terms and conditions of sale and delivery
topex GmbH
Erkenbrechtsweiler

I.

Validity

- (1) All our offers, sales and deliveries are made exclusively on the basis of the following terms and conditions of sale and delivery in their latest valid version. These terms and conditions also apply to all future business with us.
- (2) The customer's terms and conditions of purchase are hereby expressly rejected. Any agreements deviating from our terms and conditions shall only be valid if they have been confirmed by us in writing as an addition to our terms and conditions of sale and delivery.

II.

Offer

- (1) All documents belonging to our offers, such as illustrations, drawings as well as weight and dimension specifications, are only approximately authoritative, unless they are expressly designated as binding. This applies in the same way to DIN standards and all other references in plans, advertising brochures etc. We reserve the right of ownership and copyright to all the aforementioned documents; they may also not be made accessible to third parties without our express written consent.
- (2) Verbal collateral agreements as well as the assurance of properties and subsequent contractual amendments shall only be valid if they have been confirmed by us in writing.

III.

Scope of delivery

- (1) Our written order confirmation is always decisive for the scope of our delivery; in the event of an offer by us with a time commitment and acceptance by our customer

within the specified period, our offer is exclusively valid for the scope of delivery, unless an order confirmation to the contrary has been sent by us.

- (2) We have the right to make technical changes and modifications to the delivery item if the technical function and suitability of the delivery item is not impaired by this.

IV.

Prices and payment

- (1) In the absence of a special agreement, all our prices are ex works in Euro plus value added tax at the rate applicable at the time.
- (2) Additional costs, such as in particular for packaging, transport, insurance, customs etc. as well as for any agreed assembly, will be charged separately.
- (3) All TOPEX invoices are generally due for payment within 30 days net. In the case of the delivery of complete control systems, payment shall be made to us without any deduction free paying agent Erkenbrechtsweiler, namely:
 - 1/3 down payment after receipt of our order confirmation by the customer;
 - 1/3 down payment as soon as the customer is informed by us that the delivery item is ready for dispatch;
 - the remaining amount within one month after delivery of the delivery item to the customer at the latest.

Assembly costs, repair costs, software costs as well as costs for product information and seminar fees are payable immediately without any deduction unless otherwise agreed.

- (4) Payment shall only be deemed to have been made when we can dispose of the amount without restriction. Insofar as payment by cheque has been granted by us in writing, the submission of a cheque by the customer does not constitute cash payment. Cheques are only accepted on account of performance. All costs incurred in connection with the encashment of the cheque shall be borne by the customer. We are not obliged to present cheques in due time. If a cheque is not honoured or not honoured in time, the

customer must ensure that our entire claim or residual claim is settled immediately plus all costs incurred up to that point.

- (5) The retention of payments due to any claims of the customer against us, which are based on another contractual relationship concluded with us, is excluded. The customer is not permitted to offset our claims against his own claims unless these are undisputed or legally established claims.
- (6) If the customer is in default with his payment obligation, we shall be entitled to charge interest from the date of default at the interest rate charged by our commercial banks for open overdrafts, but at least 4% above the respective discount rate of the German Federal Bank. These interest rates are to be set higher or lower if we prove a burden with a higher interest rate or the customer proves a lower burden on our part. The right to assert further damages caused by default is reserved in any case.

V.

Delivery time, default and impossibility

- (1) All delivery times stated by us are always considered to be approximate and not binding. The delivery time shall commence with the conclusion of the contract, but not before all documents, approvals, releases, execution details etc. to be procured by the customer have been provided, which are necessary for the determination and manufacture of the delivery item and not before receipt of a down payment by us, if such is owed by the customer.
- (2) The delivery time shall be deemed to have been observed if the delivery item has left our factory by the end of the delivery time or if we have notified the customer that the delivery item is ready for dispatch.
- (3) If the customer suffers damage due to a delay caused by slight negligence on our part, on the part of our executive employees, our vicarious agents or our assistants, any claims against us shall be excluded; if we, our executive employees, our vicarious agents or our assistants have violated cardinal obligations, the exclusion of liability shall not apply. However, the above exclusion of liability shall also apply to claims for damages by the customer against us in the event of termination of the contract due to

default (withdrawal) and in the event of subsequent impossibility of performance caused by slight negligence on our part.

- (4) If the dispatch of the delivery item is delayed at the request of the customer, he shall be charged, beginning one month after notification of readiness for dispatch, the costs arising from storage, in the case of storage in our factory, but at least ½ of the invoice amount for each month. This percentage is to be set higher or lower if we can prove higher costs or if the customer can prove that we have incurred lower costs for storage. We are also entitled to dispose otherwise of the delivery item after setting and fruitless expiry of a reasonable deadline and to supply the customer after a reasonably extended deadline.
- (5) If we are prevented from fulfilling our contractual obligations by the occurrence of unforeseeable, unusual circumstances which we could not avert despite reasonable care being taken in the circumstances of the case – regardless of whether they occurred in our factory or at our subcontractors – such as in particular operational disruptions, also caused for example by fire or water, loss of specialists, official sanctions and interventions, delays in the delivery of essential raw materials and building materials or energy supply problems, the delivery time shall be extended by a reasonable period of time, provided that these circumstances lead to delays and the delivery and performance is not rendered impossible as a result. We shall not be responsible for the above-mentioned circumstances even if they occur during an already existing delay. If the delivery or performance becomes impossible due to the aforementioned circumstances, we shall be released from our delivery obligation without the customer being able to assert any claims against us.

Even in the event of strikes and lockouts, the delivery time shall be extended to a reasonable extent if these events do not make delivery or performance impossible, provided that these events lead to delays. If the delivery or performance becomes impossible, we shall be released from our delivery obligations; even in this case, the customer is not entitled to any claims against us.

In the event that the hindrance lasts longer than 2 months, the customer is entitled to withdraw from the contract concluded with us with regard to the part of the delivery not yet fulfilled.

- (6) We reserve the right to correct and timely self-delivery in any case.

- (7) Compliance with the delivery time presupposes the fulfilment of all contractual obligations by the customer.

VI.

Passing of risk and acceptance

- (1) The risk of accidental loss or deterioration of the delivery item shall pass to the customer at the latest upon dispatch of the delivery item to the customer, even if partial deliveries are made or if we have also assumed other services, such as in particular the shipping costs or the delivery of the delivery item. At the express written request of the customer, we will insure the consignment against theft, breakage, transport, fire and water damage and other insurable risks at the customer's expense.
- (2) If dispatch is delayed due to circumstances for which the customer is responsible, the risk of accidental loss or deterioration of the delivery item shall pass to the customer from the day of readiness for dispatch. In such a case, however, we shall be prepared to take out the insurance policies requested by the customer at his written request; all costs arising from this shall be borne by the customer. Irrespective of this, the customer is obliged to reimburse us for all additional expenses incurred by such delays.
- (3) The delivery item, even if it has minor defects, is to be accepted by the customer without prejudice to his warranty rights.
- (4) Partial deliveries on our part are permissible.

VII.

Retention of title

- (1) All deliveries and services shall remain our property until full payment of all our claims existing at the time of conclusion of the contract, irrespective of the legal grounds. If we have entered into contingent liabilities in the interest of the customer, all deliveries and services shall remain our property until we are fully released from such obligations. This also applies if payments have been made for specially designated claims. The inclusion of such individual claims in a current invoice as well

as the striking of a balance and its recognition shall not affect the retention of title.

- (2) If the reserved goods delivered to the customer are processed or treated, the treatment or processing shall be carried out by the customer for us without any obligations arising for us.
- (3) If the delivery item is combined with items not belonging to us, we shall become co-owners of the entire item in accordance with the statutory provisions. If the purchaser acquires sole ownership of the new item in such a case, he hereby assigns co-ownership to us in proportion of the delivery item to the value of the items connected with it at the time of connection.
- (4) If reserved goods are sold by the customer alone or together with goods not belonging to us, the customer hereby assigns to us the claims arising from the resale in the amount of the value of the reserved goods with all ancillary rights. If the sold goods are in our co-ownership, the assignment of the claim shall extend to the amount corresponding to the share of our co-ownership. We hereby accept the above assignments.
- (5) Subject to revocation, we authorise the customer to collect the claims assigned to us. If the customer defaults on his obligations to us, he must name all debtors of the assigned claims and notify them of the assignment. In such a case, we are also entitled to notify the respective debtors of the assignment ourselves and to make use of our collection authority.
- (6) If the customer acts in breach of the contract, in particular in the event of default of payment or breach of his obligation to handle the delivery item with care, we shall be entitled to take back the delivery item after issuing a reminder and setting a deadline, and the customer shall be obliged to hand it over. The assertion of our retention of title and the attachment of the delivery item by us shall not be deemed to be a withdrawal from the contract. The customer hereby declares his agreement that the persons commissioned by us to collect the reserved goods in such a case may enter and drive on his premises where the reserved goods are located for this purpose.
- (7) The customer is only entitled and authorised to resell, use, install, combine or process the goods subject to retention of title in the normal course of business and only on condition that the claims assigned to us in accordance with the above are actually transferred to us or that we become co-owners of the entire item in accordance with the

above. The customer is not entitled to dispose of the reserved goods in any other way. In particular, he may not pledge the delivery item or assign it as security.

- (8) The customer shall inform us immediately of any enforcement measures by third parties in respect of the delivery item subject to retention of title – even if we only have co-ownership – or in respect of the claims assigned to us, and shall hand over the documents necessary for the objection.
- (9) The delivery item subject to retention of title shall be insured by the customer at his expense, in particular against fire and theft.
All claims against the respective insurer shall be deemed assigned to us with regard to the delivery item subject to retention of title. We hereby accept this assignment.
- (10) If the value of the securities granted to us in total exceeds our claims by more than 20%, we shall be obliged and prepared to return or release the securities granted to us to the customer if they exceed the agreed limit of indemnity.

VIII.

TOPEX software

- (1) If the delivery item consists exclusively of TOPEX software, or if TOPEX software is part of the delivery item, the customer shall exclusively receive a non-exclusive, non-transferrable right to use the software on a hardware product to be specified in an individual contract, which right is not limited in time, including all associated documentation, for an additional fee to be agreed upon in each individual contract.
- (2) TOPEX remains the owner of the copyright and all other industrial property rights.
- (3) The customer is prohibited from making copies of TOPEX software; COPYRIGHT notes may not be removed.
- (4) The transfer of TOPEX software to third parties requires our express prior written consent. If we grant such consent, the customer is obliged to impose all obligations existing towards us on his customer.

- (5) The customer is not entitled to make changes to the software unless we give our express prior written consent.
- (6) Before transferring software for test purposes or for the commissioning of a system, all necessary preparatory work on the part of the customer must be completed.

IX.

Notice of defect

- (1) Obvious defects or other complaints regarding the delivery item – including the absence of warranted characteristics – must be submitted to us in writing without delay, but no later than 14 days after receipt of the delivery item; non-obvious defects must also be submitted to us in writing without delay, but no later than 14 days after detection.
- (2) If defects or other complaints regarding the delivery item are not asserted within the periods in accordance with the above paragraph (1), all warranty claims of the customer against us are excluded.

X.

Warranty

- (1) In the event of a defect or in the absence of a warranted characteristic, we shall, if a complaint is made in due time in accordance with the above, during a period of 12 months from the handover of the delivery item to the customer, at our discretion either repair or replace the defective parts of the delivery item. If we have assumed the obligation to set up and/or assemble the delivery item on the basis of an additional agreement with the customer, the warranty period shall also be 12 months beginning with the acceptance of the delivery item by the customer.
- (2) If dispatch, installation, commissioning or acceptance of the delivery item is delayed through no fault of our own, our warranty obligation shall expire at the latest 12 months after the passing of risk.

- (3) If we have repaired the defect twice or delivered a replacement once and the existing defect could not be rectified as a result, the customer may demand a reduction in the purchase price instead of repair or replacement delivery or, after setting a reasonable deadline, in conjunction with a threat of rejection, demand cancellation of the contract concluded with us. This shall also apply if we unjustifiably refuse or unduly delay a necessary repair of defects or if the customer cannot be reasonably expected to accept a repair of defects for other reasons.
- (4) In the case of third-party products, our warranty shall be limited to the assignment of the claims which we have against the supplier of the third-party product. In the event that the customer is unable to enforce his warranty claims against the supplier of the third-party product, we shall provide warranty within the scope of our terms and conditions.
- (5) The customer shall give us the necessary time and opportunity to carry out the repair of defects or replacement delivery after consultation with us.
- (6) Any parts replaced under warranty shall become our property.
- (7) We shall not assume any warranty for damage to the delivery item, which has occurred in particular for the following reasons:

Unsuitable or improper use, faulty assembly or commissioning by the customer or third parties, incorrect or negligent handling, in particular due to non-observance of our operating instructions, excessive strain as well as the use of unsuitable operating materials and replacement materials, insofar as the damage that has occurred is not attributable to fault on our part, on the part of our executive employees, vicarious agents or assistants, whereby we, our executive employees and our vicarious agents or assistants are only guilty of intent or gross negligence in such cases.

- (8) All other claims to which the customer is entitled against us due to or in connection with defects or the lack of warranted characteristics of the delivery item, regardless of the legal basis, in particular claims from positive violation of claims and claims from fault at the time of conclusion of the contract, are excluded. The exclusion of liability shall also apply if we have employed vicarious agents or assistants. The exclusion of liability shall not apply if we, our executive employees, our vicarious agents or our assistants are guilty of gross negligence or if we, our executive employees, our vicarious agents or our assistants have violated essential contractual obligations

(cardinal obligations) and the purpose of the contract as a whole is endangered thereby. The same shall apply if warranted characteristics of the delivery item are missing and the warranty had the specific purpose of protecting the customer against damage that did not occur to the delivery item itself. In the event of a slightly negligent breach of cardinal obligations, however, our liability is limited to the value of the order.

- (9) Warranty claims against us are only due to the customer and may not be assigned.

XI.

Other claims for damages

- (1) Even outside the area of warranty, i.e. in particular in the case of liability on our part due to impossibility or delay, liability for damages resulting from the breach of obligations during the contract negotiations or from a positive breach of contract as well as from tortious acts, including consequential damages of any kind, we shall only be liable – and this shall also apply if we have employed executive employees, vicarious agents or assistants – if we, our executive employees, our vicarious agents or assistants are guilty of gross negligence or intent, as well as in cases in which essential contractual obligations (cardinal obligations) are breached and the purpose of the contract as a whole is endangered thereby. In the latter case, however, our liability is limited to the value of the order. The exclusion of liability does not apply to claims arising from the Product Liability Act, unless these claims can be excluded and/or limited.
- (2) In the event that the delivery item cannot be used or cannot be used in accordance with the contract by the customer as a result of a slightly negligent failure to provide the necessary advice on our part, on the part of our executive employees, vicarious agents or assistants or as a result of a slightly negligent breach of other contractual ancillary obligation, even after conclusion of the contract – in particular instructions for the operation and maintenance of the delivery item – and the customer suffers damage as a result, claims for damages against us are also excluded in this respect, with the exception of cases in which cardinal obligations have been breached.

XII.

Place of performance, applicable law, place of jurisdiction, written form

- (1) Place of performance for payment and delivery is Erkenbrechtsweiler.
- (2) The law of the Federal Republic of Germany shall apply exclusively to our terms and conditions of sale and delivery and the entire legal relationship between us and the customer, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- (3) For all present and future claims arising from the business relationship, including cheque claims, it is agreed that the place of jurisdiction shall be our registered office, provided that the customer is a registered trader or a legal entity under public law. However, we are also entitled to file a suit at the headquarters of the customer.
- (4) Collateral agreements, reservations, amendments and supplements to the existing contractual relationship with us and to these terms and conditions require our written confirmation to be valid. This shall also apply in the event of a waiver of the written form requirement.