

Terms and Conditions of Sale and Supply of the SemiQuarz GmbH, 85391 Allershausen

As at: June 2008

1. Applicability

These Terms and Conditions apply to all contracts, deliveries and other services, including consultancy services. These Terms and Conditions override any Terms and Conditions of the buyer.

2. Quotation and conclusion

- 2.01 Quotations are always subject to change. Orders are regarded as accepted if we either confirm them in writing or fulfill them immediately upon receipt of order, in which case the delivery note or invoice constitutes the acknowledgement of order.
- 2.02 If our sales staff make additional verbal agreements or give assurances, which go beyond the written contract, such agreements or assurances must always be confirmed in writing. Unaffected by this provision are verbal assurances given by persons who have unrestricted authority to represent us or have authority to represent us which cannot be restricted externally.
- 2.03 We are not bound by obvious mistakes or typographical, printing or arithmetical errors. Documents, which form part of the quotation such as illustrations, drawings, calculations and specifications, are definitive unless otherwise agreed. Such information, including in particular information on the performance of the products supplied and on the applications for which such products are suitable, does not constitute a warranty as to the properties of such products unless we provide a written statement to that effect.
- 2.04 If we make samples available to the purchaser these are to be regarded as samples for test purposes.
- 2.05 We retain the ownership of all cost estimates, drawings and other documents. They may only be used for the stated purposes and may not be made available to third parties.
- 2.06 If after conclusion of the contract we become cognizant of facts, in particular regarding default on payment in connection with earlier deliveries, which appear upon proper consideration from a commercial point of view to indicate a deterioration in the customer's financial circumstances, we are entitled to require payment in advance or appropriate securities and if this is refused to withdraw from the contract, in the event of which any partial deliveries which have already been made will immediately be due for payment.
- 2.07 If an order is cancelled we reserve the right to charge for raw materials which have already been processed or for purchases which have been made especially for this contract.

3. Delivery times and delay

- 3.01 Unless Management have provided a written undertaking specifically stated to be binding, any delivery time is only provisionally agreed. The delivery period begins on the day on which all technical and other details relating to the contract have been clarified and any required documents have been provided. The delivery period is extended by the length of time during which the purchaser is in default of his contractual obligations, including those arising from other contracts in an ongoing business relationship.
- 3.02 If a particular delivery time or deadline passes without delivery being effected and if the purchaser wishes to withdraw from the contract or claim compensation for non-performance the purchaser must nevertheless set an appropriate period of grace – of at least 14 days – for performance of the delivery and declare that he will refuse delivery after expiry of the period of grace. This does not apply if we have expressly stated that a period or deadline for the performance is binding.
- 3.03 Partial deliveries of reasonable quantities are permissible.
- 3.04 The delivery period – even if already the subject of delay – is extended by an appropriate amount in the event of force majeure and all unforeseen difficulties for which we are not responsible occurring after conclusion of the contract, including in particular interruption of our operations, strikes, lockouts or disruptions of the transport system, provided that it can be demonstrated that such difficulties have a significant influence on our performance or delivery. This also applies if such circumstances affect our suppliers and their sub-suppliers. We shall inform the purchaser as soon as possible of the beginning and end of difficulties of this type. The purchaser can ask us to state whether we intend to withdraw or to deliver within an appropriate period of time. If we do not provide an immediate response the customer is entitled to withdraw.

4. Delivery, despatch, passing of risk, packing

- 4.01 Delivery is made at your risk and at your expense.
- 4.02 We shall select the means of despatch and the despatch route. We shall also select the packing, taking account of production-related, transport-related and environmental factors. The goods will be insured at the customer's request and at his expense.
- 4.03 Risk passes to the purchaser when the goods are handed over to a forwarder or freight carrier but at the latest when they leave our warehouse.

5. Prices and payment

- 5.01 Our prices are quoted net in euros. We supply ex works. Packing and dispatch costs and value added tax at the legally applicable rate will be added.

- 5.02 Our invoices are payable within 14 days with 2% discount or 30 days net, in either case from the invoice date. If the discount payment date is missed we are entitled to invoice for additional charges.
- 5.03 For partial deliveries we can request a proportional payment in accordance with the above provisions.
- 5.04 For each payment reminder issued starting with the first reminder we shall make an administrative charge of € 5.00. If in the event of delayed payment a collection agency is instructed to collect the amount due, the purchaser shall bear the costs arising from this procedure with the exception of the fee payable upon successful outcome.
- 5.05 Bills of exchange are not accepted as a form of payment.
- 5.06 If the terms of payment are not adhered to or if we become cognizant of facts which appear to indicate a deterioration in the customer's financial circumstances, we are entitled to make further deliveries contingent on pre-payment.
- 5.07 In the event of non-payment we can prohibit any further sale or disposal of the goods which have been supplied.
- 5.08 Offsetting against our claims is only permissible in the case of undisputed counterclaims or counterclaims which have been established as legally valid. No right to retention arising from earlier or other transactions within the continuing business relationship can be asserted. Unilateral deductions from an invoice for the disposal of packing materials, in particular transport packaging, are not permitted.

6. Retention of title

- 6.01 We retain the title to all goods until the purchase price has been paid in full. We retain the title to goods which the purchaser acquires from us in the course of business until all our claims arising from the business relationship – including claims arising in the future from contracts concluded at the same time or later – have been paid. This applies also if we combine some or all of our claims into one open account and draw a balance, which is agreed and recognized.
- 6.02 If goods to which we retain the title are combined by the purchaser with other goods, we are entitled to co-ownership of the new item in the ratio of the invoice value of the retained goods to the invoice value of the other goods and the cost of processing. If our property is extinguished by combining, blending or processing, the purchaser shall at the time the contract is concluded assign to us his right of ownership of the new item in the amount of the invoice value of the retained goods and preserve it for us without charge. The ownership rights which thereby arise are regarded as retained goods under no. 6.01.
- 6.03 The seller is to be informed immediately in writing of any change of address, any intervention by third parties and in addition any judicial attachments; in the case of a judicial attachment the attachment order must be enclosed. Until he has acquired ownership the purchaser is not entitled to mortgage the purchased goods or to assign them as security to a third party.
- 6.04 The purchaser shall notify us immediately of any access of third parties to the retained goods and the assigned claims. He is entitled to sell the retained goods only in the normal course of business subject to his normal business conditions and insofar as he is not in default, on condition that the claims arising from resale in accordance with nos. 6.04 – 6.05 are transferred to us. He is not entitled to make any other disposition with regard to the goods to which title has been retained.
- 6.05 The claims of the purchaser arising from the resale of the goods to which we have retained the title are hereby assigned to us. They serve as security to the same extent as the retained goods. If the retained goods are sold by the customer with other goods not supplied by us, the claim arising from the resale is assigned to us in the ratio of the invoice value of our goods to the other goods sold. In the event of the resale of goods of which we have proportional joint ownership in accordance with no. 6.02, a share corresponding to our proportional ownership shall be assigned to us.
- 6.06 The purchaser is entitled to collect the claims arising from resale. If we so request he shall immediately inform his customer of the assignment to us – if we do not do so ourselves – and shall provide us with the information and documents necessary for collection of the claim or claims. The purchaser is not in any circumstances entitled to further assignment of the claim. An assignment in the course of genuine factoring is permitted to the purchaser only on condition that we are informed of this and are given details of the factoring bank and of the accounts of the purchaser which are held there and on condition that the proceeds of factoring exceed the value of our secured claim. Our claim becomes payable immediately upon receipt of the credit note relating to the proceeds of factoring.

7. Notification of defects and warranty

- 7.01 The purchaser must inspect the goods immediately after delivery.
- 7.02 All apparent and/or identified defects, incorrect quantities or incorrect deliveries must be notified to us in writing at the latest within 14 days of delivery but in any event before processing or installation. If we are not notified within the appropriate period of complaints or defects the delivery is considered to have been approved. Additional obligations of the merchant under Sections 377 and 378 of the German Commercial Code are not affected.
- 7.03 Our warranty period for all supplies is 6 months from the date of delivery. In the event of any justified complaint we shall at our choice either remedy the defect or provide a replacement. The purchaser shall permit us to make three attempts to remedy any defect.
- 7.04 The purchaser must grant us such time and opportunity as may reasonably be considered appropriate for the remedying of defects and in particular he must make available to us the objects, which are the subject of complaint or samples thereof; the warranty lapses if this is not done.
- 7.05 If an appropriate deadline of which we have been notified expires without our having remedied the defect or supplied a replacement, or if the remedying or replacement is impossible or is refused by us, the customer has the right at his choice to request cancellation of the contract (rescission) or reduction of the purchase price (reduction).

- 7.06 We are not responsible for damage or injury arising from inappropriate or improper use or from alteration or repair, incorrect or negligent handling, normal wear and tear or willful damage.
- 7.07 If at the time of passing of risk the goods are lacking a warranted property, the customer has the right to withdraw from the contract. Claims for compensation (e.g. for loss of profit) are excluded unless we or our agents are guilty of intent or gross negligence.
- 7.08 Safety regulations: all relevant safety regulations should be observed. In the case of deliveries made abroad, if legal regulations relating to safety apply in the customer's country, in particular with regard to the handling of the goods supplied, the customer has sole responsibility for complying with these regulations. The customer shall exempt us from all claims arising from such regulations.
- 7.09 In the event of complaints the goods must be returned to us free of all charges. Within the warranty period we shall then repair or exchange the goods free of charge if they are defective as a result of faults in materials or manufacture.

8. General limitation of liability

- 8.01 Our liability is based exclusively on the provisions of the above paragraphs. Claims for compensation of the purchaser arising from negligence in concluding the contract, breach of contractual subsidiary obligations and prohibited behavior are excluded unless they are based on gross negligence on our part or on the part of one of our agents. In the event of breach of material contractual obligations we are also liable for minor negligence; in this event, however, our liability is limited to compensation for foreseeable and naturally arising damage. These claims expire one year after receipt of the goods.
- 8.02 Claims arising from product liability law are not affected by the above provisions.

9. Seller's lump-sum claim for compensation

If the purchaser refuses to accept the purchased goods, the seller is entitled to require appropriate compensation.

10. Data protection

Our customers are hereby informed that we comply with the provisions of the Federal Data Protection Act in making use of personal data acquired in the course of the business relationship.

11. Supplementary agreements, general

- 11.01 Alterations or additions to this contract are not valid unless made in writing.
- 11.02 Any assignment of rights or transfer of obligations arising from this contract requires our prior written consent.
- 11.03 Verbal or written supplementary agreements may be made only by our Managing Director.

12. Place of fulfillment, place of jurisdiction, applicable law

- 12.01 Place of fulfillment and sole place of jurisdiction for performance and payments (including cherub complaints) and all disputes arising therefrom is, insofar as the purchaser is a trader as defined by the German Civil Code, a legal person in public law or public-law property, Munich. We are however entitled to take proceedings against the purchaser at his place of jurisdiction.
- 12.02 The contractual relationship is governed exclusively by the law applicable in the Federal Republic of Germany excluding the UN Purchasing Convention.
- 12.03. Should individual provisions in these Conditions of Sale and Supply be unenforceable or become unenforceable as a result of changes in the law, the validity of the remaining provisions shall in no way be affected.