

§ 1 Scope, Validity

- (1) The following terms and conditions are binding part of all contracts offered by Poynting GmbH and are solely valid. Conflicting or deviating terms and conditions of the Customer are not binding for us unless we have expressly recognized these as legally binding in writing. The following terms and conditions are valid even if we deliver services or goods to the Customer without objections or reservations against conflicting or deviating terms and conditions.
- (2) If a contract has been concluded these terms and conditions are valid also for all future business contracts between Poynting GmbH and the Customer insofar as these are legal transaction of similar nature.
- (3) These terms and conditions of sale are valid only for companies, firms or other legal entities of public law according to § 310 (1) BGB (German Civil Code).

§ 2 Offer, Conclusion of Contract, Scope of Supply

- (1) Insofar a purchase order is considered as offer according to § 145 BGB (German Civil Code), we can confirm it within two weeks.
- (2) Decisive for the scope of supply (of goods or services) is only a concrete mutual declaration in writing. Has a contract been concluded without such a declaration, either a written confirmation by Poynting GmbH or, if such a confirmation does not exist, the written order of the Customer is decisive.
- (3) Collateral agreements are valid only if they are confirmed in writing.

§ 3 Provided Documents and Materials, Confidentiality

- (1) We reserve all property rights and copyrights to all documents and other materials which the Customer received by Poynting GmbH in connection with the order, like e.g. drawings, images, technical documentations, calculations, samples, models etc.; these may not be made accessible to third parties without our express written consent. If we don't accept the order, offered by the Customer, within the period in § 2, all provided documents and materials must be sent back or destroyed, at Poynting's option without delay.
- (2) Prototypes, pilot series and projects are also subject to mutual obligation to maintain confidentiality. The latter can be terminated only with express written consent.

§ 4 Prices and Payment Conditions

- (1) Unless nothing to the contrary has been agreed in writing, all our prices are in EURO, ex works (according to INCOTERM 2010), excluding packaging, plus the statutory rate of value added tax. Costs of packaging will be charged separately.
- (2) Payment of purchase prices must only be made by bank transfer to the account referred to in the invoice. Deduction of discounts is only permitted if expressed by special agreement in writing.
- (3) Unless nothing to the contrary has been agreed in writing, the purchase price is due immediately and payable latest within 21 (twenty one) days from date of billing. Default interests will be calculated by 8 % (eight percentage) plus statutory rate of base interest per annum. Enforcement of damage extended beyond The right to claim extended damages remains reserved.
- (4) Reasonable price changes as a result of changed prices for raw materials, wages and cost of distribution taking effect 3 (three) months or more after the conclusion of the contract are permitted in accordance with mutual agreement of the contractual partners.
- (5) The Customer shall only be entitled to offsetting rights or rights of retention if its counter-claims are declared legally valid, are undisputed or have been recognised by Poynting GmbH.

§ 5 Delivery Time of Goods or Services

- (1) The delivery time of goods and services assumes the clarification of all technical issues as well as completely fulfilled obligations of the purchaser in timely and proper manner. If any of the preconditions is not met the delivery time will be appropriately extended.
- (2) Delivery time is deemed to be met, when the goods ready for operation were shipped or collected within the confirmed delivery time. If the delivery is delayed for reasons within the Customer's responsibility, delivery time is deemed to be met when the notice indicating readiness for shipment is within the confirmed delivery time.
- (3) If there is evidence for non-compliance with the deadline for the supply of goods or services as a result of force majeure, e.g. war, mobilisation, measures within the scope of industrial disputes, in particular strikes and lock-outs, furthermore, in the event of unforeseen occurrences beyond the power and control of Poynting GmbH, such as natural disasters or any delay of delivery of essential materials, the confirmed delivery time will be extended appropriately. The same is deemed if any of these circumstances occur at any supplier of Poynting GmbH.
- (4) Claims for damages of the Customer are excluded in all cases of delayed delivery even if a statutory extension period set to the supplier has been expired. In case of a late delivery claims for damages are limited to a maximum of 15% of the delivery value of the goods in default, regardless of a proof of higher damages.
- (5) If the Customer delays acceptance or if he infringes other duties of cooperation we are entitled to claim resulting damage including any possible extra expenses., within the provisions of law. The right to any further demands is reserved. Insofar as such aforesaid conditions apply, the risk of accidental loss or deterioration of the goods will pass to the Customer at the moment in which his delay in acceptance commences.

§ 6 Transfer of Risk on the Goods

If shipment of the goods to the Customer is on demand of the Customer, the risk on the goods passes to the buyer latest at the moment when the goods are transferred to the carrier or with report of readiness for dispatch. The risk passes to the buyer regardless of who bears the costs of the transport and who actually performs the transport or of the place from which the goods will be sent. Packaging will be performed with best care and diligence. On demand and at expenses of the Customer we will conclude insurances against usual transportation risks.

§ 7 Retention of Title

- (1) We reserve the ownership of the items of delivery until full payment of all claims arising of the business contract. We are entitled to take back the goods and withdraw the contract if the Customer is in breach of the contract, particularly default of payment. Taking the goods back is deemed to be a withdraw of the contract. After taking back the purchase item we are entitled to utilize it. Utilisation proceeds will be deducted from Customer liabilities - less reasonable utilisation costs.
- (2) As long as the property of the purchase item has not passed to the Customer, the Customer is obliged to treat the goods with utmost care. Nevertheless, the Customer is responsible for timely maintenance or necessary repair at his own expense. As long as the property has not passed the Customer has to inform us immediately by writing, when the delivered goods will be seized or exposed to any claims of a third party. Insofar the third party is not able to reimburse us judicial or extra-judicial expenses of an action as per § 771 of the Civil Procedure Code, the Customer is liable for our loss resulting from this.
- (3) The Customer is entitled to resell the purchase item or parts of it, if all obligations to Poynting GmbH are fulfilled completely. Already herewith, the Customer assigns to us in advance all claims resulting from reselling reserved goods up to a maximum of the purchase price as specified in our invoice (inclusive VAT).
- (4) Further processing, intermixing, reshaping or reconfiguration of the purchase item by the Customer will always be performed on our behalf as manufacturer but without any obligation. In this case ownership and expectancy rights on the purchase item is transferred to the new good. Insofar the purchase item has been processed or irreversible combined with other items not belonging to us, Poynting GmbH acquires co-ownership of the new item created in the ratio of the value of the goods supplied under reservation of title (final invoice value including value-added tax) to the value of the other goods processed at the time of processing.

§ 8 Reception

- (1) The Customer must not refuse reception of deliveries because of minor deficiencies.
- (2) Partial deliveries are allowed.

§ 9 Warranty, Notification of Defects, and Recourse

- (1) The Customer's statutory warranty rights require that its obligations under § 377 HGB (German Commercial Code) are fulfilled, in particular the duties of inspection and of notification of defects.
- (2) Warranty claims are time-barred in 12 months since the Customer received the goods delivered by us. This does not apply if the law (BGB, German Civil Code) mandatory prescribes longer periods, or in cases of injury of life, limb or health, in the case of wilful or grossly negligent breaches of duty on our part or if a defect was fraudulently concealed.
- (3) If, despite all care taken, the item of delivery is shown to be defective already at the time of transfer of risk, subject to notification of defect at due date, we shall provide repair or replacement at our discretion and at our expense.
- (4) Prior to any return of goods our consent must be obtained.
- (5) Within appropriate period of time we shall always have the opportunity for supplementary performance. If the supplementary performance fails, the Customer can withdraw the purchase contract or claim an appropriate reduction in payment, without prejudice of any claims of damages.
- (6) There are no warranty claims in case of only minor or irrelevant deviations from the confirmed properties of the goods or services, in case of minor or irrelevant impairment of usability, in case of natural wear as well as when damages after transfer of risk are caused by faulty or negligent treatment or by improper use, as for example operation beyond the limits of technical load, or by special external influences which are not presumed in the contract. Warranty claims are excluded for improper repair work, changes or modifications performed by the Customer or any third party as well as for resulting defects and consequences.
- (7) Claims of the Customer concerning additional expenses for the purpose of supplementary performance, in particular costs of transport, travel, labour or materials are excluded, if these expenses are increased because the delivered goods are subsequently transferred to a different place from the site of the Customer, unless this transfer corresponds to the intended purpose of the goods.
- (8) Further claims for compensation of the Customer regardless of its type, particularly, consequential damage caused by a defect, non-contractual liability or claims resulting from injury of contractual side-duties (e.g. non-assistance or faulty advice, faulty instructions or others) are excluded from any warranty.
- (9) Customer's rights of recourse against us apply only in so far as the Customer has not concluded any agreements with its Customer beyond the mandatory warranty by law. Furthermore, paragraph passage (7) applies appropriately for the claims for recourse, too.

§ 10 Miscellaneous

- (1) This agreement as well as the contractual and legal relationship between Poynting GmbH and the Customer is governed by the law of the Federal Republic of Germany with the exclusion of the United Nations Convention on Contract for International Sale (CISG).
- (2) Place of performance and sole place of jurisdiction for any dispute arising in connection with the contractual relationship between Poynting GmbH and the Customer is the place of our registered office, unless otherwise is said in the order confirmation.
- (3) All agreements between Poynting GmbH and the Customer for the purpose of accomplishment are set down in writing in this contract. Changes and amendments have to be made in writing. Oral collateral agreements will be deemed invalid, unless they are confirmed in writing.
- (4) If any provision of this agreement, or portion thereof, is held to be or becomes invalid or unworkable, all other provisions of this agreement remain unaffected thereof.