

General Terms of Delivery (GTD) – 0630b e/2010-11

§ 1 Scope

1. These general terms of delivery (hereinafter referred to as GTD) shall exclusively apply to all sales and deliveries as well as for orders to our workshop (repair orders), apply as varied by express agreement accepted in writing by both parties. The offer and confirmation of the order of any products covered herein are based upon the terms contained in this instrument. Any different terms proposed by the buyer/customer are objected to and will not be binding upon the seller, unless assented in writing. These conditions shall govern any future individual contract of sale between the seller and the buyer/customer to the exclusion of any other terms and conditions. They shall also apply, if we unreservedly delivered or fulfilled the repair order although we have known about different terms of the buyer/customer.

2. Any stipulations regarding the execution of the contract of sale shall only be binding upon the parties if they are in writing.

3. Regarding repair orders, all services requested and the time of performance have to be specified in an order form. Additionally it has to be specified, if the time of performance is supposed to be a fixed or a not binding date. The customer will be provided with a copy of the order form. No price indications in the order form have any binding force. If the customer is requesting a binding price indication, he must call for a written cost estimate (Kostenvoranschlag). We shall not be bound on this written cost estimate for a longer period than one month. The customer may only charge us for his own performances regarding the cost estimate, if this had been previously agreed to in writing. If services under this agreement are requested on the basis of the cost estimate, the expenses for the cost estimate will be deducted from the repair cost. The amount indicated in the cost estimate may only be exceeded, if the repair proves to be more difficult than expected and the customer agrees to the overruns.

§ 2 Prices of the goods

1. Our prices are quoted ex works (INCOTERMS 2000); excluding costs of packing and packaging, which have to be borne by the buyer/customer, unless it has been stated otherwise in the confirmation of the order.

2. The prices are exclusive of any value added tax.

3. With respect to weights and measures set out in the orders and confirmations of the seller deviations are admissible as long as they are customary within commercial practice. Measures and quantities set out in the delivery notes of the seller shall be binding for invoicing. Complaints about weights, measures and quantities delivered have to be filed by the buyer/customer within 14 days of delivery in writing.

§ 3 Delivery time

1. Delivery time confirmed by the seller will not commence, before buyer/customer has delivered any documents necessary to fulfil the commitments of the seller under the contract of sale. The seller has met his commitments, when he has informed the buyer/customer that goods are ready for shipment or goods have left his premises.

2. If any material has to be provided by the buyer/customer, it has to be delivered at his own risk and expense to the factory of the seller, undamaged and in due time. If the buyer/customer fails to fulfil his obligations, deadline for delivery is postponed accordingly. If the provided material is inadequate, wrong or has been delivered too late, the buyer/customer is liable for any necessary additional expenditure.

3. The scheduled delivery date will be postponed in cases of an act of God including unexpected stoppages, unavoidable shortages of raw material, lawful strike actions and any other occasions, the seller is not liable for. The same is true for suppliers and sub-suppliers of the seller. If such delay lasts for more than six months or if such an occasion made deliveries under the contract impossible, both parties are entitled to terminate the contract of sale. The seller shall inform the buyer/customer about expected delays immediately. In cases of termination of the contract, the seller shall reimburse any consideration already received from the buyer/customer. Under this clause the buyer/customer is not entitled to damages.

4. The buyer/customer must grant an extension in writing, if the seller has failed to fulfill his obligations under the contract in due time. After the extension has expired without the seller having fulfilled his obligations, the buyer/customer is entitled to terminate the contract, if he is not responsible for the non-performance of the seller by himself. Section 325 subsection 5 and 6 of the German Civil Code applies. Damages for delays are excluded. Any discharges from liability will be void if the delay has caused death or personal injury or if it results from a gross negligent or intentional breach of the contract on the part of the seller. The same applies if the seller may be held responsible for the breach of a fundamental contractual obligation. Same is true for the breach of a contractual obligation by a representative or staff-member of the seller.

5. Any discharge from liability under No. 4 will be void, if according to Section 376 HGB (German Commercial Code) the contract of sale had to be settled on a fixed date. Same is true if the buyer/customer provides sufficient evidence, that there is no interest on his side in the contract anymore because of the breach of the contract by the seller.

6. If buyer/customer wrongfully fails to accept delivery on due date or fails to fulfill other obligations under the contract of sale, he shall nevertheless make any payment conditional on delivery as if the goods had been delivered. The seller shall arrange for the storage of the goods at the

risk and cost of the buyer/customer and is entitled to recover any loss suffered by the seller by reason of the failure of the buyer/customer. Risk of damage to or loss of the goods as well as to price and performance shall pass to the buyer/customer, if buyer/customer fails to accept delivery.

7. Regarding repairorders, we have to adhere to the fixed dates of performance, unless the order has been modified or extended by the customer. In this case, a new performance date has to be fixed by the parties. The further paragraphs of this section remain unaffected.

8. Regrading repairorders, the customer has to call for his property within one week after completion of the repairwork. If the customer fails to do so, statutory law applies, in particular the rules regarding the failure of a customer to accept the completed work. In case of default, we are entitled to charge the customer with the expenses for safekeeping his property.”

§ 4 Transfer of risks

1. Unless otherwise stated in the confirmation of the order seller undertakes to deliver „ex works“ (INCOTERMS 2000).

2. Risk as to price and performance as well as the risk of damages to or loss of the goods shall pass to the buyer/customer at that time when the seller notifies the buyer/customer that the goods are available for his disposal not loaded on any collecting vehicle. If according to the confirmation of the order the buyer/customer is entitled to fix the time of acceptance within an agreed period of time, risk of damages to or loss of the goods passes to the buyer/customer after the agreed period of time has been elapsed if the goods have been appropriated for the buyer/customer.

§ 5 Warranties and exclusion clauses

1. If the buyer/customer is not a consumer according to Section 13 of the German Civil Code, he shall examine the goods as required by German law (Section 377 of the German Commercial Code) and in doing so check every delivery in any respect for any lack of conformity with the contract of sale. The buyer/customer shall give notice of any lack of conformity with the contract of sale to the seller as required by law, and in any event directly and in writing and by the quickest possible means by which delivery is guaranteed (e.g. by fax). The same is true for any deviations of the delivered goods, qualities and quantities from the stipulations in the contract of sale. If the buyer/customer fails to give notice about the non-conformity of the goods within reasonable time, the buyer/customer may only rely on remedies if the seller has fraudulently concealed the lack of conformity with the contract of sale or if the non-conformity was not discernible at the time of delivery. If the non-conformity appears later, the buyer/customer must give notice immediately upon ascertainment.

2. If any valid claim in respect of any goods which is based on any defect in the quality or condition of the goods has been notified to the seller, the buyer/customer must grant a reasonable extension in writing. After this extension has expired, the seller is indented upon his sole discretion to either repair the goods or to replace the goods free of charge (subsequent performance). The replacement of the goods is excluded, if it is unreasonable for the seller. If the seller repairs the goods, he must bear any necessary expenses including for transport, labor and material, unless these expenses have been increased because the goods have been moved to another place than the principal place of business of the buyer/customer after delivery and this was not within its customary use. The repair of the goods takes place upon the sole discretion of the seller either on its own premises or at the premises of the buyer/customer. If the buyer/customer requests that the repair take place on a different location, the seller may comply with this request made upon its sole discretion. The additional expenses will be reimbursed by the buyer/customer.

The buyer/customer must not request repair from any other company, unless we have previously agreed to do so in writing. If a repair is carried out by another company without our permission, customer loses any warranty claims against us. If we agree, the conditions according to our permission apply, exclusively. Any further conditions must be in writing and have to be agreed to in advance.

Returns for repair by the customer will only be accepted by us, if the goods had been previously and completely cleaned and decontaminated. The customer must attach a declaration of decontamination to every item. The declaration must be exclusively given on the forms provided by us. It must be fixed to any item and be visible from the outside. If customer fails to do so, we shall deny the request for repair and shall send back any item to the customer on his charge without having opened it.

If the buyer/customer sends back any two-part SONOREX-devices to sellers factory for repair, he always must send in the HF-generator together with the oscillating tank, immersible transducers and/or flat transducer plates, with respect SONOPULS the HF-generator with ultrasonic converter, booster horn and the used probes, with respect to SONADENT-devices the handle or fingerswitch handle and the used chisles. If the seller replaces a non-conforming item by a conforming item, the buyer/customer must return the non-conforming item to the seller.

3. If subsequent performance has failed twice or has been proved unreasonable and therefore been refused by the seller, the buyer/customer is entitled to terminate the contract of sale or to ask for a reduction of the sales price according to Section 444 subsection 3 of the German Civil Code. Termination of the contract is excluded for the buyer/customer, if the non-conformity of the goods is insignificant.

4. Claims for damages and for compensation are excluded for the buyer/customer, if expenses had been made trusting that the contractual relationship will continue. Any discharges from liability will be void if the damages result in death or personal injury or if they result from a gross negligent or intentional or fundamental breach of the contract on the part of the seller. In case of a fundamental

breach of the contract liability of the seller is limited to the typical and foreseeable damages. This clause also refers to the representatives and staff-members of the seller. If the buyer/customer asks for damages with respects to the whole contractual obligations of the seller, buyer/customer has to return any items he had already received from the seller.

5. Any claim of the buyer/customer which is based on any defect in the quality or conditions of the goods or their failure to correspond with specifications shall be notified to the seller within 24 months from the date of delivery, if the item is regularly used less than eight hours per day. It has to be notified to the seller within 12 months from the date of delivery, if the item is regularly used more than eight hours per day and if the buyer/customer is not a consumer according to Section 13 of the German Civil Code and the defect has not been fraudulently concealed or the damages result from death or personal injury or from a fundamental breach of the contract. In these cases the statutory time limits apply. This clause also applies to consequential damages, as long as the claims are not based on torts.

6. The warranty period starts at the time of delivery.

7. Any warranty is excluded, if the buyer/customer did not comply with the operating and maintenance instructions of the seller, made alterations to the goods delivered, replaced components of the goods or has used other chemicals than SONOREX chemicals in order to clean the sound radiating surfaces of SONOREX devices and if this conduct resulted in the damages claimed.

8. Ordinary wear and tear is excluded from any warranties. In particular this is true for cavitation, as according to physical laws this is a typical erosion of material by ultrasound even if it is used properly.

§ 6 Waste disposal

1. The buyer/customer and his customers are not permitted to use the products for private purposes. Neither is the buyer/customer permitted to leave the products to his employees or other people for private use.

2. Regarding the waste disposal of the products the following applies:

- If the products had been delivered to a member state of the EU and the buyer/customer acquired them for resale purposes only, the buyer/customer is committed to oblige his customers to dispose the products according to the statutes of his country.
- If the products had been delivered to a member state of the EU and the buyer/customer acquired them for his own use, the buyer/customer is committed to dispose the products properly or to deliver the products in a clean and sterilized condition on his own expense back to the seller for disposal.
- If the products had been delivered outside the EU, the buyer/customer is committed to dispose the products properly or to deliver the products in a clean and sterilized condition on his own expense back to the seller for disposal and to oblige his customers to do so accordingly.

§ 7 Scope of liability

1. Any further liability than stated in Section 3 subsection 4 and Section 5 subsection 4 is excluded, regardless of the reason of the claim.

2. No. 1 is not valid for claims according to Sections 1,4 of the German Code for Product Liability. If the limitation of liability according to Section 5 subsection 4 sentence 3 does not apply for claims on product liability according to Section 823 of the German Civil Code, liability of the seller is limited to the sum insured with the public liability insurance of the seller.

3. No. 1 is not valid, if performance under the contract had been already impossible at the conclusion of the contract, if the seller was aware of this fact at that time or is responsible for its ignorance. Further, it is not valid, if performance under the contract of sale becomes impossible after conclusion of the contract of sale and the seller is responsible for this fact. Section 3 subsection 3 applies.

4. Any exclusion on limitation of liability of the seller also applies to the personal liability of his representatives and staff-members.

5. If deliveries are made according to drawings or instructions of the buyer/customer, the buyer/customer will indemnify the seller from any third party claims, in particular intellectual property rights, as long as the seller is not liable by himself.

§ 8 Retention of title

1. Notwithstanding delivery and passing of risk in the goods, or any other provision of these conditions, the property in the goods shall not pass to the buyer/customer until the seller has received payment in full of the price of the goods and all other goods agreed to be sold by the seller to the buyer/customer for which payment is then due. The retention of title also applies until settlement of all accounts receivable and other claims by the seller against the buyer/customer which have accrued under other contracts, including those which only fall due in the future.

2. The buyer/customer shall keep the goods with care; in particular he shall keep the goods properly stored, protected and insured against damages from fire, water and theft at original value. Maintenance services have to be provided on his own costs on time. The buyer/customer is keeping the property of the seller as his fiduciary agent and free of charge.

3. The seller shall have absolute authority to retake, sell or otherwise deal with or dispose of all or any part of the goods in which title remains vested in the seller. If the seller takes back the goods from the buyer/customer because of breach of contract by the buyer/customer, he is terminating the contract at the same time. The termination of the contract does not exclude any claims for damages of the seller. If third parties take up steps to pledge or otherwise dispose of the goods, the buyer/customer shall immediately notify the seller in order to enable him to seek a court injunction in accordance with Section 771 of the German

BANDELIN

Code of Civil Procedure. If the buyer/customer fails to do so in due time he will be held liable for any damages caused. Same is true, if the third party is not able to bear the necessary court-fees and expenses for lawyers of the seller.

4. Until the time property passes to the buyer/customer, he shall be entitled to resell or use the goods in the ordinary course of business, but shall account to the seller for the proceeds of sale or otherwise of the goods including insurance proceeds, and shall keep all such proceeds separate from any moneys or properties of the buyer/customer and third parties. Other dispositions, in particular pledging and chattel mortgage (transfer by way of security) are prohibited. If the buyer/customer is in breach of the contract, seller may withdraw the right of the buyer/customer to resell the goods of the seller and ask the buyer/customer for names and addresses of its debtors.

5. If the goods are processed or reshaped by the buyer/customer and if processing is done with goods that seller has no property in, seller shall become co-owner of the goods.

6. No. 5 also applies if the seller's goods are completely reshaped and mixed with other goods.

7. The seller shall on demand of the buyer/customer release any part of the collateral if the value of the collateral held in favor of the seller exceeds the value of the claims being secured by more than 10%. It is to the seller's decision to release those parts of the collateral suitable for him.

8. If according to the legal system at the principal place of business of the buyer/customer an agreement with respect to a reservation of ownership as stated in No. 1, is not admissible, the buyer/customer is obliged to offer alternative securities for his debts. Regarding repairorders, the following applies: In addition to the statutory lien, we shall have a contractual lien on every item of the property of the customer. This contractual lien is extended to secure our claims resulting from previous repairs connected to the property of the customer. We reserve our property rights to any spare parts installed to the property of the customer until full payment of our invoice for repair, unless they have become essential components of the property of the customer.

§ 9 Models, tools etc.

Any tools, stencils etc. will remain the property of the seller, even if buyer/customer has contributed to its production costs.

§ 10 Terms of payment

1. Unless otherwise agreed, the buyer/customer shall pay the price of the goods within 30 days upon the date of delivery without deductions. If the buyer/customer pays 10 days upon the date of delivery, the seller allows a 2% discount. If the buyer/customer fails to make a payment on due day, he falls into arrears without further notice. The 2%

discount is excluded, if seller has other claims unsettled against the buyer/customer. Section 366 subsection 1 of the German Civil Code is excluded.

2. If the buyer/customer fails to make any payment on the due date, the seller is entitled to charge the buyer/customer interest on the amount unpaid at the rate of 8 percentage points above European Central Bank reference rate and if the buyer/customer is a consumer according to Section 13 of the German Civil Code at the rate of 5 percentage points above European Central Bank reference rate from then being valid per annum, until payment in full has been made. The seller shall be entitled to prove that the delay of payment caused further damages which have also to be paid by the buyer/customer. The same is due for any costs of judicial and extra judicial proceedings including lawyer's fees.

3. Payment shall be effected by interbank payment transaction only; cheque or bill of exchange will not be considered as fulfillment of the payment obligation, unless otherwise agreed in writing. Discount charges and stamp duties have to be borne by the buyer/customer.

4. Legal rights of the buyer/customer to set-off against claims of the seller for payment are excluded, except where the corresponding claim of the buyer/customer has either been finally judicially determined or recognized by the seller in writing. Legal rights of the buyer/customer to suspend payment and to raise defenses are excluded, except where despite written warning the seller has committed a fundamental breach of its obligations to deliver or transfer the title to the contract products arising out of the contract of sale.

5. Regarding repairorders, we may request reasonable advance payments, if expenses occur for the purchase of spare parts.

§ 11 Miscellaneous clauses

1. The place of performance and payment for all obligations arising from the legal relationship between the seller and the buyer/customer is Berlin (Germany). In particular, this provision also applies in the case of restitution of performances already rendered.

2. If the buyer/customer is not a consumer according to Section 13 of the German Civil Code, the parties submit all contractual and extra contractual disputes arising from this contract of sale to the local and international exclusive jurisdiction of the courts having jurisdiction for Berlin. The seller shall have the right to also file a claim at the principal place of business of the buyer/customer as well as before other courts competent according to any national or foreign laws.

3. The legal relationship among the seller and the buyer/customer is governed by German law exclusively.

§ 12 Final clause

If provisions of these GTD should be or become partly or wholly void, the remaining conditions will continue to apply.