



# GENERAL TERMS AND CONDITIONS OF DELIVERY AND SALE

DER QUALITY AUTOMATION GMBH

(As of: Januar 2020)

## § 1 Scope

Our terms and conditions of delivery and sale shall apply exclusively; we do not recognise any terms and conditions of the customer which contradict or deviate from our terms and conditions of delivery and sale unless we have expressly agreed to their validity in writing. Our terms and conditions of delivery and sale shall also apply if we carry out the delivery to the customer without reservation in the knowledge that the customer's terms and conditions contradict or deviate from our terms and conditions of delivery and sale. Our terms and conditions of sale shall only apply to companies within the meaning of Section 310 I German Civil Code (BGB).

## § 2 Object of the contract

Once the contract has been signed, changes to the ordered appliances/equipment shall only be binding following a detailed written request from the customer and written confirmation by Quality Automation GmbH. The delivered machinery and equipment comply in all respects with the EEC Machinery Directive, Council Directive of 14/06/ 1989 (Machinery Directive) (89/392/EEC.91/386/EEC.93/44/EEC.93/68/EEC), as well as all current supplements or national laws in which the directive was implemented.

## § 3 Price adjustment

If there are more than four months between the placing of the order and delivery, Quality Automation GmbH is entitled to increase the quoted prices accordingly in case of a change in the prices of its suppliers and/or in case of currency fluctuations or in case of a change in customs and import duties after the conclusion of the contract. However, this price increase may not exceed 15% of the original price. In the same way and to the same extent Quality Automation GmbH is obliged to reduce the prices in case of cost reductions. Cost increases and cost reductions are balanced. Both cost reductions and cost increases will be proven by Quality Automation GmbH to the customer upon request as soon as and as far as they have occurred.

## § 4 Default

If the client fails to make a payment when it becomes due, they shall be in default without a reminder. In this case Quality Automation GmbH is entitled to charge the statutory default interest. This does not exclude the assertion of further damages caused by default.

## § 5 Retention of title

All delivered appliances/equipment remain the property of Quality Automation GmbH until receipt of all payments from the supply contract. In the event of breach of contract by the customer, and especially in the event of default, Quality Automation GmbH is entitled to take back delivered appliances/equipment. Taking back the appliances/equipment constitutes a withdrawal from the contract. After taking back the appliances / equipment, Quality Automation GmbH is authorised to sell them, the proceeds of sale are to be credited against the customer's liabilities - minus reasonable sales costs.

The customer is obliged to treat the delivered appliances/equipment with care; in particular, they are obliged to insure them sufficiently at their own expense against fire, water and theft damage at replacement value. If maintenance and inspection work is necessary, the customer must carry this out in good time at their own expense.

The processing or transformation of the delivered appliances/equipment by the customer is always carried out for Quality Automation GmbH. If the delivered appliances/equipment are processed with other objects that do not belong to Quality Automation GmbH, Quality Automation GmbH will acquire co-ownership of the new object in the ratio of the value of the delivered appliances/equipment (final invoice amount, including VAT) to the other processed objects at the time of processing. In all other respects, the same shall apply to the object resulting from processing as to the appliances/equipment delivered under retention of title.

The customer is entitled to resell the appliances/equipment owned by Quality Automation GmbH in the ordinary course of business. Pledging or transfer by way of security is not permitted. As a precautionary measure, the customer hereby assigns to Quality Automation GmbH all claims arising from the resale or any other legal reason with respect to these appliances/equipment in the amount of the final invoice amount (including VAT) of the claim of Quality Automation GmbH. Quality Automation GmbH revocably authorises the customer to collect the claims assigned to it for its account in its own name. This collection authorisation can only be revoked if the customer does not properly meet their payment obligations. If this is the case, Quality Automation GmbH may demand that the customer discloses the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors of the assignment.

Quality Automation GmbH is obliged to release the securities to which it is entitled upon request of the customer to the extent that the realisable value of the securities exceeds the claims to be secured by more than 10%; the selection of the securities to be released is at the discretion of Quality Automation GmbH.

## § 6 Delivery period

Delivery will be made at the time specified in the contract. The beginning of the delivery period stated by Quality Automation GmbH requires the clarification of all technical questions. Compliance with the delivery obligation further requires the timely and proper fulfilment of the obligations of the customer. The objection of non-performance of the contract remains reserved. If the customer is in default of acceptance or if they culpably violate other obligations to cooperate, Quality Automation GmbH is entitled to demand compensation for the damages incurred by Quality Automation GmbH in this respect, including any additional expenses. Further claims or rights are reserved.

Provided that the conditions of the previous paragraph are met, the risk of accidental loss or accidental deterioration of the delivered appliances/equipment shall pass to the customer at the point in time at which the customer is in default of acceptance or debtor's default.

The delivery deadline shall be considered met if the delivery leaves the Quality Automation GmbH plant before the deadline. Quality Automation GmbH is entitled to make partial deliveries at any time. In case of non-compliance with this delivery deadline, the customer is entitled to set Quality Automation GmbH a reasonable grace period in writing, of at least four weeks. In the event of culpable non-compliance with this grace period, the customer may withdraw from the contract. With regard to the assertion of claims for damages, § 11 of these general terms and conditions of delivery and sale shall apply accordingly. Circumstances or events that make it impossible or considerably more difficult for Quality Automation GmbH or its suppliers to deliver (e.g. strike, lockout, shortage of raw materials or energy, traffic and operational disturbances, war or riots) interrupt the delivery obligation for the duration of the hindrance.

## § 7 Dimensions / Weight

The customer has verified that the requirements for the floor loading capacity described in the contract are given. They have also verified that the accesses to their premises are of sufficient size for the dimensions of the appliances/equipment to be built as described in the contract. Any liability of Quality Automation GmbH for damages caused by the weight of the appliances/equipment to be delivered or the delivery vehicle is excluded; § 11 applies accordingly.

## § 8 Drawings / Samples / Constructions

All drawings, samples, models and calculations prepared for the execution of the contract remain the property of Quality Automation GmbH. They must be kept secret by the customer, may not be copied or used for other purposes and must be handed

over to Quality Automation GmbH immediately upon request. A right of retention for these drawings, samples, models and calculations is excluded.

## § 9 Acceptance

The preliminary acceptance includes the fundamental examination of the technical functions required for the process in the Quality Automation GmbH plant. Quality Automation GmbH will inform the customer in writing of the possible date of the preliminary acceptance at least one week in advance. A preliminary acceptance will only take place if the customer confirms this date within two days. If no confirmation is received by this deadline, this shall be deemed to be a waiver of the preliminary acceptance. The final acceptance is carried out within 14 days of installation and commissioning and includes a complete check of the technical functions required for the process. Defects which become apparent during preliminary acceptance and acceptance shall be documented in a list of defects which shall be signed by both parties to the contract.

## § 10 Claims and rights due to defects

The claims and rights due to (legal and material) defects are limited to those defects of the device which are not due to natural wear and tear within the scope of the contractual use or to improper treatment/use. The period of limitation for claims and rights due to defects is one year for newly manufactured goods or work performances and six months for used goods. §§ 438 paragraph 1, No.2, 634a paragraph 1 No. 2 BGB remain unaffected. A shortening of the limitation period shall not apply to liability for intent or fraudulent intent. With regard to other claims for damages, § 11 of these terms of delivery and sale shall apply.

If Quality Automation GmbH's operating or maintenance instructions are not followed, if modifications are made to the delivered appliances/equipment, if parts are exchanged or if consumables are used that do not comply with the original specifications, all claims for defects caused by these are void. The limitation period for the warranty rights begins with the date of acceptance. Quality Automation GmbH must be notified immediately of any defects that become apparent within the limitation period for the warranty rights. Any claims for defects shall initially be based on subsequent performance in the form of the repair or replacement of the appliance/equipment subject to complaint. Quality Automation GmbH may at its own discretion decide whether the defective appliance/equipment is to be sent to Quality Automation GmbH at its own expense for repair and subsequent return to the customer, or whether the customer is to keep the defective appliance/equipment ready and a Quality Automation GmbH service technician is to be sent to the customer to carry out the repair. If such an attempt at subsequent performance remains unsuccessful even after the customer has set a reasonable grace period, the

customer shall be entitled to demand rescission or reduction. Any claims and rights due to defects presuppose that the customer is not in default with his contractual payment obligations. This does not apply to statutory rights of retention. In the event that the appliances/equipment to be manufactured by Quality Automation GmbH are integrated into a process sequence, such as a production line, at the customer's premises, the contracting parties agree that the claims and rights due to defects only apply to the parts manufactured by Quality Automation GmbH. No warranty is given for the functionality of other parts of the process unit or the process unit as a whole. With regard to the functional efficiency of the interfaces, a warranty is only given insofar as the customer has not **deviated from** the details they provided regarding these interfaces.

Only the direct customer is entitled to claims and rights due to defects and these are not transferable.

## § 11 Limitation / exclusion of liability for damages

Quality Automation GmbH is liable according to the statutory provisions if the customer asserts claims for damages based on intent or gross negligence of the representatives or vicarious agents of Quality Automation GmbH. As far as Quality Automation GmbH is not accused of an intentional breach of contract, the liability for damages is limited to foreseeable, typically occurring damage. Quality Automation GmbH is also liable in accordance with the statutory provisions if it culpably violates an essential contractual obligation; in this case, however, the liability for damages is also limited to foreseeable, typically occurring damage.

The limitations of liability shall also apply if the customer demands compensation for useless expenses instead of compensation for the damage.

Liability for culpable injury to life, limb or health remains unaffected; this also applies to mandatory liability under the Product Liability Act.

Unless otherwise regulated above, liability for damages is excluded. The limitation or exclusion of liability for damages also applies with regard to the personal liability for damages of the employees, staff, representatives and vicarious agents of Quality Automation GmbH.

## § 12 Confidentiality

In the absence of any separate confidentiality agreements, the contracting parties undertake to use the knowledge and experience acquired during the planning and execution of the contract exclusively for the execution of this contract. The contracting parties shall be obliged to maintain absolute secrecy towards third parties with regard to all business matters which become known to them through the execution of this contract and the results obtained in the broadest sense, in particular data, regulations, samples, drawings and designs.

## § 13 Miscellaneous

All changes and amendments to the contract must be made in writing to be effective. A possible invalidity of individual contractual provisions shall not affect the remaining provisions of the contract. Invalid contractual provisions shall be replaced by such provisions which come closest to the economic purpose of the invalid provision. The same applies to any contractual gaps. The place of jurisdiction for all disputes arising from the contractual relationship is Aachen for both parties. Unless otherwise stated in the order confirmation, Quality Automation GmbH's place of business is the place of performance. The law of the Federal Republic of Germany applies exclusively. The provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.



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