

## **1. DEFINITIONS**

“Seller”:	Stieber GmbH
“Buyer”:	The party contracting with Seller for the purchase of the Goods.
“Contract”:	These General Conditions of Supply (these “General Conditions”), any contract issued by Seller (including any quotation or acknowledgement), and any technical or commercial specifications or terms and conditions expressly agreed to by Seller in writing.
“Goods”:	All or any part of the products, goods, work, equipment and services to be provided by Seller under the Contract.

## **2. CONTRACT TERMS**

All quotations, offers and tenders are made subject to these General Conditions, and “Acceptance” of the Contract shall be subject to these General Conditions. Buyer shall be deemed to have accepted the Contract, including these General Conditions, upon communication of its purchase order number to Seller via telephone, electronic communication or other means, sending its purchase order to Seller via facsimile, electronic communication, mail or other means, or performing any other act that indicates acceptance. Any modifications of or deviations from these General Conditions must be agreed by the parties in writing.

These General Conditions are intended by Seller to be part and parcel of any offer, counteroffer or acceptance addressed to Buyer. Upon Acceptance, the Contract shall constitute the final written expression of the entire agreement between Buyer and Seller. All prior, contemporaneous and subsequent representations, negotiations, and agreements, whether written or oral, including, but not limited to, terms and conditions submitted by Buyer, shall have no legal effect and shall not become part of the Contract unless expressly agreed to in writing by the parties and made a part hereof. No statement or recommendation made or assistance offered by Seller or its representatives shall constitute a waiver of any portion of these General Conditions, change Seller’s liability or constitute any guarantee or warranty. All information and data contained in general product documentation and price lists shall be binding only to the extent that they are by reference in writing expressly included in the Contract.

## **3. DRAWINGS AND TECHNICAL INFORMATION**

All drawings and technical documents relating to the Goods or their manufacture submitted by one party to another, prior or subsequent to formation of the Contract, shall remain the property of the submitting party. Drawings, technical documents or other technical information received by one party shall not, without the consent of the other party, be used for any other purpose other than that for which they were provided. Such information may not, without the consent of the submitting party, otherwise be used or copied, reproduced, transmitted or communicated to any third party.

Seller shall, not later than the date of delivery of the Goods, provide information and drawings to Buyer as shall be necessary to permit Buyer to install, commission, operate and maintain the Goods. Such information and drawings shall be supplied in the number of copies agreed upon, or at least one copy of each. Seller shall not provide manufacturing drawings for the Goods or for any spare parts

## **4. DELIVERY; PASSING OF RISK**

Any agreed trade term shall be construed in accordance with the INCOTERMS in force at the formation of the Contract. Unless otherwise agreed in writing by the parties, all Goods will be shipped FCA Seller’s facility (Incoterms 2010) and both title and risk of loss (including transportation delays and losses) shall pass to Buyer upon delivery to the carrier at the shipping point, whether Seller prepays freight or not. Partial delivery shall not be permitted, unless otherwise agreed by the parties.

## **5. SHIPMENT AND DELIVERY; INSPECTION**

Seller will ship “Freight Collect” unless otherwise specified. Seller reserves the right to prepay the freight and invoice Buyer for costs, including reasonable packaging costs. If Buyer does not specify a carrier, then Seller shall select the method of transportation. Time is not of the essence of the Contract, all shipping dates are estimates and Seller shall not be responsible for any delays whatsoever. The date of delivery shall in every case be dependent upon prompt receipt of all necessary information, final instructions or approvals from Buyer.

Seller will endeavor to comply with reasonable requests of Buyer to postpone delivery, but shall be under no obligation to do so. Where delivery is postponed other than due to default of Seller, or in the case of Buyer’s refusal or inability to accept any shipment in accordance with the terms of any order, Buyer shall be liable for freight, express, storage, extra cost of handling and all other applicable expenses incurred by Seller as a result of such postponement, refusal or inability.

All Goods which have been altered or damaged are not returnable except with Seller’s prior written consent. To reject Goods on inspection as defective, Buyer must notify Seller in writing within ten (10) days from receipt of the Goods. Before allowing or rejecting a claim, Seller shall then have the option of reinspection at Buyer’s facility or at its own. Defects that do not impair service shall not be a cause for rejection. Seller shall have the right to replace within a reasonable time any Goods which in Seller’s opinion do not conform to the order. No claim will be allowed for any Goods damaged by Buyer or damaged in transit. Expenses incurred in connection with claims for which Seller is not liable, will be charged to Buyer. Seller will not be responsible for any work done to correct errors unless such work is authorized by the written consent of Seller.

## **6. PAYMENT TERMS**

Unless otherwise agreed in writing by the parties, all invoices are payable within thirty (30) days of the invoice date. Where Goods are delivered by installments, Seller may invoice each installment separately and Buyer shall pay such invoices in accordance herewith. Whatever the means of payment used, payment shall not be deemed to have been effected before Seller’s account has been irrevocably credited for the amount due. If Buyer fails to pay by the stipulated date, Seller shall be entitled to interest from the day on which payment was due and to compensation for recovery costs. The rate of interest shall be as agreed between the parties or otherwise eight

(8) percentage points above the rate of the main refinancing facility of the European Central Bank. The compensation for recovery costs shall be one percent (1%) of the amount for which interest for late payment becomes due. In case of late payment and in case Buyer fails to give an agreed security by the stipulated date, Seller may, after notifying Buyer, suspend its performance of the Contract until receipt of payment or, where appropriate, until Buyer gives the agreed security. If Buyer has not paid the amount due within three (3) months, Seller shall be entitled to terminate the Contract by written notice to Buyer and, in addition to the interest and compensation for recovery costs according to this Section 6, to claim reasonable compensation for the loss incurred. If Seller is required to refer any order to an attorney for collection, Buyer agrees that all costs, attorney fees, and expenses of said collection shall be added to the amount due Seller from Buyer.

## **7. WARRANTY; LIABILITY FOR DEFECTS**

Pursuant to the terms of this Section 7, Seller shall remedy any defect or nonconformity (hereinafter referred to as "defect(s)") in the Goods supplied hereunder resulting from faulty materials or workmanship. Seller shall in no event be liable for defects arising out of materials provided or a design stipulated or specified by Buyer. Seller shall only be liable for defects which appear under the conditions of operation provided for in the Contract and under proper use of the Goods. Seller shall not be liable for defects caused by circumstances which arise after risk has passed to Buyer, e.g., defects due to faulty maintenance, incorrect installation or faulty repair by Buyer or to alterations carried out on the Goods without Seller's prior written consent. Seller shall not be liable for normal wear and tear nor for deterioration of the Goods.

Seller's liability shall be limited to defects which appear within a period of twelve (12) months from delivery of the Goods (the "Warranty Period"). If the use of the Goods exceeds that which is agreed, the Warranty Period shall be reduced proportionately. When a defect in a part of the Goods has been remedied, Seller shall be liable for defects in the repaired or replaced part under the same terms and conditions as those applicable to the original Goods for a period of twelve (12) months. For the remaining parts of the Goods, the Warranty Period shall be extended only by a period equal to the period during which and to the extent that the Goods could not be used as a result of the defect.

Buyer shall, without undue delay, notify Seller in writing of any defect that appears in any of the Goods delivered hereunder. The defective Goods must be delivered within the Warranty Period specified above to Seller's factory, with evidence that the Goods have been properly installed, maintained and operated in accordance with Seller's instructions. If Buyer fails to notify Seller in writing of a defect within the Warranty Period as set forth herein, Buyer shall lose its right to have the defect remedied. Where the defect is such that it may cause damage, Buyer shall immediately inform Seller in writing. Buyer shall bear the risk of damage to the Goods resulting from its failure to so notify Seller. Buyer shall take reasonable measures to minimize damage and, in that respect, shall comply with instructions of Seller.

On receipt of notice from Buyer, if Seller determines that any such returned Goods are not in conformity with the warranty set forth herein, then Seller shall, at its sole option and expense, either repair the same or supply replacement Goods. Unless otherwise agreed, necessary transport of the Goods or parts thereof to and from Seller in connection with the remedying of defects for which Seller is liable shall be at the risk and expense of Seller. Buyer shall follow Seller's instructions regarding such transport. Unless otherwise agreed, Buyer shall bear any additional costs for remedying the defect(s) caused by the Goods being located in a place other than the destination stated at the formation of the Contract for Seller's delivery to Buyer or, if no destination has been stated, the place of delivery. If no defect is found in the Goods for which Seller is liable pursuant to this Section 7, Seller shall be entitled to compensation for the costs it incurs as a result of its investigation of such alleged defect.

Except as expressly set forth in this Section 7, Seller shall not be liable for defects in the Goods delivered hereunder and Seller's liability for defects shall be expressly subject to the limitations on liability set forth in Section 8 below. Seller makes no other warranty with respect to the Goods and expressly disclaims all other warranties, express or implied, including warranties of merchantability and of fitness for a particular purpose, arising by operation of law or otherwise.

## **8. LIMITATION OF LIABILITY**

To the maximum extent permitted by applicable law, in no event shall either party be liable hereunder for any claims for indirect, incidental, special, consequential or punitive damages or losses, loss of production, loss of profit, loss of use, or loss of contracts, all of which are expressly excluded. This limitation of liability shall not apply if a party has been determined guilty of intentional or gross negligence or if a party has negligently caused damage to life, body or health. Furthermore, the limitation of liability shall not apply in cases of negligent breach of a fundamental condition of the contract ("wesentliche Vertragspflichten"). In the case of slight negligence, a party shall be liable only for reasonably foreseeable damage which is intrinsic to the Contract. Nor shall the said limitation of liability apply in cases of strict liability under the Product Liability Act ("Produkthaftungsgesetz"), for defects of the Goods causing death or personal injury, or damage to items of property used privately. Furthermore, the said limitation of liability shall not apply in the case of damage attributable to fraudulent concealment or under a specific guarantee granted.

## **9. FORCE MAJEURE**

Either party shall be entitled to suspend performance of its obligations under the Contract to the extent that such performance is impeded or made unreasonably onerous by an event of "Force Majeure", which shall refer to any event or circumstance beyond the reasonable control of the parties, including, but not limited to, earthquakes, fires, severe weather, war, extensive military mobilization, sabotage, riot, insurrection, requisition, seizure, embargo, restrictions in the use of power, currency and import and export restrictions, epidemics, natural disasters, extreme natural events, terrorist acts, industrial disputes and labor troubles (including strikes and lockouts), interruptions or failures of transportation, utilities, computers or communications, and delay in obtaining or inability to obtain labor, materials, supplies or services. An event or circumstance referred to in this paragraph, whether occurring prior to or after formation of the Contract, shall give a right to suspension only if its effect on the performance of the Contract could not reasonably be foreseen at the time of formation of the Contract.

The party claiming to be affected by a Force Majeure event shall notify the other party in writing without undue delay on the intervention and on the cessation of such

circumstance. In the event of any such delay, (1) the time for performance shall be reasonably extended, (2) Seller and Buyer shall take reasonable steps to reestablish the timetable set out in the Contract, and (3) an adjustment shall be made for additional costs to Seller, if applicable. Either party shall be entitled to terminate the Contract by written notice to the other party if performance of the Contract is suspended pursuant to this Section 9 for more than six (6) months.

## **10. PROPRIETARY INFORMATION; CONFIDENTIALITY**

All drawings, models, documents, confidential records, software and other information supplied by Seller are supplied on the express understanding that all copyright and design rights are reserved to Seller and that Buyer will not, without the written consent of Seller, either give away, loan, exhibit, or sell such drawings, models, documents, confidential records, computer software or other information or extracts therefrom or copies thereof or use them in any way except in connection with the Goods in respect of which they are issued.

Buyer shall consider all information furnished by Seller, which was not previously publicly disclosed by Seller, to be confidential and shall not copy nor disclose any such information to any other person, nor use any such information for commercial purposes, nor make copies of such information without written permission from Seller. Buyer shall not disclose any information relating to any order without Seller's written permission.

## **11. MANUALS AND WARNINGS**

Seller's instruction manuals and warnings may be accessed at <http://www.stieber.de/>. Buyer acknowledges and accepts complete responsibility for ensuring that such manuals and warnings, and all future updates, are made available to and utilized by all users of the Goods; and that said individuals are properly trained to safely and competently operate the Goods. Buyer further accepts complete responsibility to make such instruction manuals and warnings available to all subsequent purchasers of the Goods. Buyer agrees to indemnify and hold harmless Seller from any and all claims, losses, damages or expenses (including attorneys' fees) arising from or in any way connected with Buyer's responsibility hereunder.

## **12. DISPUTES AND APPLICABLE LAW**

The Contract is entered into in the country where Seller (facility providing the Goods to Buyer) is located, and shall be construed in accordance with the substantive laws of such country. The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract. It is expressly agreed that all disputes arising out of or in connection with the Contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.

## **13. EXPORT CONTROL REGULATIONS**

Buyer agrees to comply with all applicable export and re-export control laws, including, without limitation, laws related to the resale and disposition of the Goods (including required export licenses, clearances and consents), in connection with performing its obligations hereunder. Buyer warrants that it will not sell, transfer or support, directly or indirectly, or assist in any sale or transfer of any products or product technology in countries or to users concerning which such sale, transfer or support is not permitted under applicable law. Buyer shall defend, hold harmless and indemnify Seller for any damages resulting to Seller from a breach of this paragraph by Buyer.

## **14. GENERAL PROVISIONS**

Any term found to be illegal or unenforceable shall be severed from the Contract and shall not, in any way, affect the validity of the Contract. A party's failure to enforce any rights or remedies available in the event of the other party's default shall not constitute a waiver and shall not bar the enforcement of such rights should the default continue or in the event of future defaults. Buyer shall not assign the Contract or any order, or any interest therein, or any rights hereunder, without the prior written consent of Seller. Seller shall be entitled to assign or sub-contract the whole or part of its obligations under the Contract.