

# General Terms and Conditions of Sale of Glenair GmbH

## 1. Scope of Application

a) Except where deviating agreements have been concluded in the individual case, all deliveries and services (hereinafter jointly referred to as "Deliveries") are effected exclusively on the basis of these General Terms and Conditions of Sale. They shall apply vis-à-vis entrepreneurs (Sec. 14 of the German Civil Code (*Bürgerliches Gesetzbuch, BGB*)), legal entities under public law and special funds under public law (Buyer).

b) By accepting these Terms and Conditions of Sale without contradiction, the Buyer agrees to the exclusive applicability of these General Terms and Conditions of Sale for the respective Delivery as well as for all subsequent transactions without us being obliged to refer to them in each individual case. In such case, the Buyer will immediately be informed about any changes to our General Terms and Conditions of Sale. Deviating or additional terms and conditions of purchase of the Buyer shall only be applicable if accepted in writing by the Seller. These General Terms and Conditions of Sale shall also apply if the Seller effects Delivery without reservations despite having knowledge of contradicting or deviating terms and conditions of the Buyer.

## 2. Offer, Conclusion of Contract, Information, Guarantees

a) Any and all quotations of the Seller shall be non-binding. Any orders for goods by the Buyer shall only be deemed a binding offer of contract if placed within a period of 60 days following receipt of a non-binding offer.

b) Statements regarding quality and durability shall only be considered as guarantees if they are explicitly identified as such. The same shall apply to the assumption of a procurement risk.

c) The information contained in data sheets, brochures and other information material only serves as a guide and shall only become a binding part of the contract if the Seller explicitly agreed in writing.

d) A contract shall only be deemed concluded if the Seller declares acceptance by means of a written order confirmation. Any subsequent oral agreements require the Seller's written confirmation in order to be valid.

## 3. Execution of Delivery

a) Except where deviating provisions have been agreed, Delivery is effected ex works (EXW).

b) Unless otherwise agreed, the Seller determines the mode and route of dispatch. A collection of the goods by the Buyer or its agent requires the Seller's prior written consent.

## 4. Passing of Risk

In case of a shipment of goods upon request of the Buyer, the price risk (*Preisgefahr*) shall pass to the Buyer at the latest upon dispatch of the goods, also if the Seller performs any additional services such as loading, transport or assembly. If the Delivery is delayed due to circumstances for which the Buyer can be held responsible, the price risk shall pass to the Buyer on the day the Buyer is notified that the goods are ready for dispatch. Transport insurances are only taken out upon explicit instruction by the Buyer and at the Buyer's expense.

## 5. Delivery, Delivery Periods, Partial and Excess Deliveries

a) The written order confirmation of the Seller shall be decisive with regard to the mode and scope of the Delivery, unless the Buyer immediately objects to it in writing. The Seller is entitled to partial deliveries, unless this is unreasonable for the Buyer.

b) The delivery period is either agreed for the individual case or indicated by us upon order acceptance. Information about

a presumed delivery period is non-binding, unless a delivery date was explicitly agreed. The delivery period shall start to run with the dispatch of the order confirmation, provided that all aspects relevant for the performance of the contract have been clarified. If the Buyer requests changes after the order acceptance which influence the production time, the delivery period shall start to run with the confirmation of the changes. In particular, the delivery period shall not start to run before the Seller has received all information required and before the Buyer has furnished proof that a letter of credit has been opened or an advance payment has been made and security been provided, respectively, according to the contract.

c) Delivery periods and delivery dates shall be extended by the duration of the disruption and its effects in the event of unforeseeable events or incidents that cannot be prevented and for which we are not responsible (e.g. force majeure, labour disputes, traffic and operational interruptions, difficulties in the procurement of materials or energy, action undertaken by government agencies as well as difficulties in the procurement of permits, in particular import and export licenses).

d) If the Delivery is delayed due to circumstances for which the Buyer is responsible, the Seller can invoice its storage costs, at least, however, 0.5% of the invoice amount for each month, starting one month following the notification that the goods are ready for dispatch. Any additional claims shall remain reserved; the Buyer may provide proof that no or a considerably lower damage incurred by the Seller as a consequence of the delay.

e) In an event such as specified in clause 5.d), the Seller is furthermore entitled to freely dispose of the goods after the expiry of an appropriate grace period which did not produce results and to effect Delivery to the Buyer with an appropriately extended period.

## 6. Defective Deliveries, Buyer's Obligations in Case of a Notice of Defects from its Customers, Reimbursement of Expenses, Liability

a) The Buyer's warranty claims are subject to the Buyer properly complying with its statutory duties to inspect and to report defects (Secs. 377 et seqq. of the German Commercial Code (*Handelsgesetzbuch, HGB*)). Irrespective of these duties to inspect and to report defects, the Buyer shall immediately, at the latest, however, within two weeks after arrival of the Delivery at the place of destination, inform the Seller in writing about any obvious defects or incompleteness of the goods stating the details of the non-conformance and indicating the invoice number. Upon request of the Seller, any receipts, samples, packing slips and/or the defective goods shall be returned. Any claims of the Buyer due to defects or incompleteness of the Delivery shall be excluded if the Buyer fails to fulfil these obligations.

b) In case of defective goods, the Seller can remedy the defects, at its choice, either by subsequently repairing the defective item or by supplying a defect-free item. Only if the Seller repeatedly fails to do so or such is unreasonable and only if there is not just a minor defect, is the Buyer entitled to withdraw from the contract or to assert reduction claims subject to the statutory provisions. Sec. 478 BGB shall remain unaffected. The Buyer has compensation claims pursuant to the provisions set forth in clause 6. e).

c) The Buyer shall immediately inform the Seller about each and every notice of defect received from its customers in relation to the delivered goods. If the Buyer fails to fulfil this obligation, it shall neither have any claims for defects vis-à-vis the Seller nor any reimbursement claims for expenses pursuant to Sec. 478 BGB.

d) The Buyer may only assert compensation claims resulting from purchasing the goods subject to subsequent delivery from third parties or from involving third parties in the subsequent improvement by way of recourse (Sec. 478

# General Terms and Conditions of Sale of Glenair GmbH

BGB) vis-à-vis the Seller if the Buyer set an appropriate grace period for the subsequent performance before which expired without results. In the case of a recourse, the Seller shall only have, for a period of six months as from handing over the goods to the consumer, the burden of proof vis-à-vis the Buyer that the goods have not already been defective before the passing of risk to the Buyer if the time passed between this passing of risk and the resale by the Buyer does not exceed twelve months.

e) The Seller shall be fully liable pursuant to the German Product Liability Act (*Produkthaftungsgesetz, ProdHaftG*) if the Seller has explicitly assumed a guarantee or a procurement risk as well as in case of intentional or grossly negligent violations of duty. Furthermore, the Seller shall be fully liable in case of an intentional or negligent injury to life, body or health. In case of damage to property and financial loss caused by slight negligence, the Seller shall only be liable if the Seller violated material contractual obligations (an obligation which must be fulfilled to enable a due performance of the contract and on whose fulfilment the contractual partner generally relies and may rely); in such case the Seller's liability shall, however, be limited to the damage which was foreseeable when the contract was concluded and which is typical of that contract.

f) Claims for the compensation of damages of any kind which result from the incorrect handling, change, assembly and/or operation of the objects of delivery or from an incorrect advice or instruction by the Buyer shall be excluded, unless the Seller is responsible for them. In addition, the Buyer shall be fully responsible for any designs, trade marks or trade names on the goods used upon the Buyer's instruction.

g) If the Buyer is entitled to request damages instead of performance or to withdraw from the contract, the Buyer has to inform the Seller, upon the Seller's request, within an appropriate timeframe as to whether and how it intends to exercise these rights. If the Buyer fails to inform the Seller within this timeframe or insists on performance, the Buyer may only exercise these rights after another appropriate grace period has expired without results.

h) Claims due to defects shall become time-barred twelve months after the passing of risk. The same shall apply to legal defects. In case of intentional or grossly negligent violations of duty, a violation of material contractual obligations, claims due to tortious acts, a lack of guaranteed qualities, the assumption of procurement risks as well as injuries to life, body or health, the statutory limitation periods shall apply. If the Delivery is to be used for a building and if the defects of the building are based on the Delivery, the warranty period shall be five years. Secs. 438 para. 3, 479 and 634a para. 3 BGB shall remain unaffected.

i) Any additional liability for the compensation of damages other than stipulated in the above sections of clause 6 shall be excluded, irrespective of the legal nature of the asserted claim.

j) The above limitations of liability shall, in terms of reason and amount, also apply in favour of legal representatives, employees and other vicarious agents and/or assistants of the Seller.

## 7. Force Majeure

In case of force majeure, strike, lockout, insufficient supply of material or energy, lack of transport possibilities and other similar events or circumstances for which the Seller cannot be held responsible and which the Seller could not foresee, the Seller shall be released from its duty to fulfil the contract for the duration and scope of such obstacles, however, not exceeding a period of up to four weeks. This shall also apply if such circumstances arise at the suppliers of the Seller. The Seller shall notify the Buyer of the beginning and end of such obstacles as soon as possible. If the obstacle is not removed after the expiry of four weeks, the Buyer may

withdraw from the contract pursuant to the statutory provisions set forth in Secs. 346 et seqq. BGB.

## 8. Conditions of Payment, Prices, Default

a) Unless otherwise agreed, prices are quoted excluding statutory VAT and shipping costs.

b) All invoices are payable within 30 days as from the invoice date without any deductions. For compliance with the payment periods, the date on which the payment is received on the Seller's accounts shall be relevant. Any expenses shall be borne by the Buyer.

c) In case of a default in payment, interest in the amount of eight percentage points p.a. above the respective base rate (Sec. 247 BGB) shall become due. The right to assert additional damages based on default is reserved.

d) The Seller is not obliged to fulfil the contract as long as the Buyer fails to fulfil its contractual obligations under other contracts with the Seller, in particular, if the Buyer fails to settle due invoices.

e) In case of several outstanding payments, the Seller is entitled to offset payments of the Buyer against its claims in the priority of their maturity. The determination right of the debtor pursuant to Sec. 366 para. 1 BGB shall be excluded in this respect.

f) The Buyer can only offset against claims and retain payments due to claims which are undisputed or have been established with legally binding effect.

g) After an appropriate grace period has expired without producing results, the Seller is entitled to effect outstanding Deliveries only against payment in advance or provision of a security if the Buyer fails to meet the contractual payment periods or in case of other circumstances which would, according to bank standards, raise doubts regarding the Buyer's capacity to pay.

## 9. Retention of Title

a) The delivered goods shall remain the property of the Seller until the Buyer has completely paid the purchase price and settled all other receivables of the Seller vis-à-vis the Buyer. In case of current accounts, the reservation of title serves to secure the Seller's outstanding balance claims. In case of a breach of contract by the Buyer, in particular in case of a failure to pay the due purchase price, the Seller is entitled to withdraw from the contract pursuant to the statutory provisions and to demand surrender of the goods based on the retention of title and the withdrawal. If the Buyer fails to pay the due purchase price, the Seller may only assert these rights if the Seller has previously set the Buyer an appropriate payment deadline which has expired without success or if it is unnecessary to set such a deadline pursuant to the statutory provisions.

b) Any processing of the delivered goods by the Buyer for the Seller as the manufacturer within the meaning of Sec. 950 BGB, shall not bind the Seller. If the goods under retention of title are combined or inseparably mixed with other objects which do not belong to the Seller to form a new uniform object and if this object is to be seen as the main object, the Buyer transfers to the Seller pro rata co-ownership insofar as the main object belongs to it. The Buyer keeps the joint property so created for the Seller free of charge.

c) The Buyer is entitled to sell, reprocess or convert the goods under retention of title in the ordinary course of business until the Seller withdraws from the contract pursuant to the above clause 9.a). The Buyer hereby already assigns any receivables resulting therefrom to the Seller. If the Buyer resells goods under retention of title together with goods from other suppliers, the Buyer shall only assign to the Seller its receivables from such resale of goods initially sold under retention of title in the amount stated in the Seller's invoice. If the objects in which the Seller has a co-ownership share pursuant to clause 9.b) are

# General Terms and Conditions of Sale of Glenair GmbH

resold, the assignment applies only to the amount of this co-ownership share. The assigned receivables shall serve as security to the same extent as the goods under retention of title.

If an assigned receivable is included into a current account, the Buyer hereby already assigns to the Seller that part of the balance from the current account which is equivalent to the amount of such receivable. Until the Seller's withdrawal pursuant to the above clause 9.a), the Buyer is entitled to collect the assigned receivable. At the request of the Seller, the Buyer is obliged to disclose the advance assignment of receivables to its customers and to provide the Seller with the information and documents required to assert the rights accordingly.

d) If the value of the securities provided for the Seller exceeds the amount of its receivables by more than 10%, the Seller is obliged to release certain securities of its choice upon request of the Buyer.

e) The Buyer is not entitled to otherwise dispose of the goods under retention of title, particularly not to pledge or assign them as security, or to assign the receivables pursuant to clause 9.c) in another way. Should the goods under retention of title be attached or seized, the Buyer shall point out that this is the property of the Seller and shall inform the Seller without undue delay.

f) The Buyer is obliged to sufficiently insure the goods under retention of title at its own cost against all usual risks, in particular against fire, burglary and water damage and to handle such goods with all due care and to ensure proper storage.

## **10. Industrial Property Rights of Third Parties, Lithographs etc.**

The Buyer shall solely be responsible for the compliance with copyrights and other industrial property rights in the equipment of the goods determined by the Buyer. In the event of any third-party claims resulting from an alleged violation of industrial property rights, the Buyer shall indemnify the Seller upon first request.

## **11. Place of Performance, Place of Jurisdiction, Transfer of Rights, Applicable Law**

a) The place of performance for Deliveries and payments shall be the Seller's place of business.

b) If the Buyer is a merchant, a legal entity under public law or a special fund under public law or does not have a general place of jurisdiction in Germany, the place of jurisdiction for all disputes arising from the contractual relationship shall be, at the Seller's choice, Frankfurt am Main or the respective place of performance (clause 11.a)), also with respect to procedures on claims arising from a bill of exchange (*Wechselverfahren*), a deed in which solely documentary evidence is submitted (*Urkundsverfahren*) and a cheque (*Scheckverfahren*). However, the Seller is also entitled to bring an action against the Buyer at the court of the Buyer's place of residence.

c) A transfer of the Buyer's rights arising from the contractual relationship shall only be admissible with the Seller's prior written consent.

d) Any legal relations between domestic contracting parties shall be governed exclusively by the relevant law of the Federal Republic of Germany; the application of the UN Convention on the International Sale of Goods (CISG) is excluded.