

GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY 2010

1. Scope

1.1 These General Terms and Conditions shall apply to the sale and the delivery of goods and *mutatis mutandis* also to the provision of other services by Prysmian OEKW GmbH and – if the relevant company makes use of these General Terms and Conditions – other companies of the Prysmian group (hereinafter called “Seller”).

1.2 Deviations from these Terms and Conditions shall only be valid if Seller has accepted them in writing.

1.3 The General Terms of Delivery issued by the Association of the Austrian Electrical and Electronics Industries (*Elektro- und Elektronikindustrie*) in the version as of November 2009 shall apply on a subsidiary basis; They are published on the homepage of the Association and the Seller shall make them available to Buyer upon request.

2. Offer

Offers are generally non-binding; documents provided in connection with the offer may not be reproduced or made available to third parties without the offeror's consent. If the order is not to happen or placed with another company, these documents must immediately be returned to the offeror.

3. Conclusion of Contract

3.1 The contract shall be deemed concluded if Seller has dispatched a written order confirmation or a delivery upon receipt of the order.

3.2 Any subsequent changes of and amendments to the

contract must be confirmed in writing in order to be effective.

4. Prices

In the absence of agreements to the contrary in writing, all deliveries shall be made on the basis of the prices valid specified in Seller's current price lists taking into account the following conditions, as applicable:

4.1 Prices are based on (raw material) costs obtaining at the time of the first quotation. In the event that the costs have increased by the time of delivery, Seller shall have the right to adjust prices accordingly. Price adjustments due to administrative or legal measures shall be considered.

4.2 The settlement of metal surcharges or reductions of metals specified in the price lists shall be based on the index of the *London Metal-Exchange* which is published by the Association of the Austrian Electrical and Electronics Industries (*Elektro- und Elektronikindustrie*) on a weekly basis.

4.3 Furthermore, the prices shall be quoted ex works or ex Seller's warehouse and do not include VAT, costs for packaging, loading, disassembly, take-back and proper recycling and disposal of waste electrical and electronic equipment for commercial purposes as defined by the Ordinance Regulating the Handling of Waste Electrical Equipment in the relevant version. Buyer shall bear the costs for transport and fire insurance, if any, as well as other fees, taxes and charges.

4.4 In case of an order of small quantities, Seller reserves the right to charge quantity surcharges or handling fees.

5. Delivered Lengths and Quantities

Deliveries of excess lengths or quantities of up to 10% of the order must be accepted and paid for by Buyer upon invoicing. If the delivery is made in coils, Seller shall be entitled to deliver up to 10% of the ordered quantities in coils that deviate from the customary lengths.

6. Packaging

6.1 Packaging as well as transportation aids (such as squared timber, supports, wedges, crates and cardboard boxes) will be charged separately and shall not be taken back by Seller.

6.2 Drums and casing will be invoiced in accordance with Seller's current price list and must be paid at the same time as the goods. In case the empty drums are returned in a condition fit for re-use and free of charge free place of delivery – no later than 24 months from the date of delivery – a reasonable remuneration depending on the duration of absence, which is specified in Seller's current price list, shall be paid.

7. Shipping

Unless otherwise agreed, the place of performance for all contractual obligations shall be the place of Seller's domicile. If shipment is agreed, the risk shall pass as soon as Seller has handed the goods over to the forwarder, carrier or other person or body specified to carry out the shipment. If the shipment is delayed for reasons beyond Seller's control, the risk shall

pass to Buyer on the day the goods are ready for dispatch.

8. Delivery

8.1 The period allowed for delivery shall commence on the latest of the following dates: the date of the order confirmation, the date of receipt by Seller of a deposit or security due before delivery of the goods in question.

8.2 Seller may carry out and charge partial or advance deliveries.

8.3 The period allowed for delivery shall be reasonably extended if unforeseeable impediments or circumstances beyond the parties' control such as all cases of force majeure, armed conflicts, official interventions and prohibitions, delays in transport or customs clearance, energy shortages and raw material scarcity, loss of a large component of the work as well as labor disputes (strike or lockout) should occur at the level of Seller or one of Seller's suppliers.

8.4 Buyer shall obtain whatever licenses or approvals may be required from authorities. If the granting of such licenses or approvals is delayed for any reason, the delivery period shall be extended accordingly.

8.5 The notice that the goods are ready for dispatch at the delivery date shall qualify as a delivery, if delivery cannot be performed at the agreed delivery date for reasons beyond Seller's control.

9. Terms of Payment

9.1 Unless otherwise agreed, Seller shall be entitled to demand a deposit. Payments shall be made to

Seller or the paying agent (bank) indicated by Seller.

9.2 Payments shall be made without any discount free Seller's paying agent in the agreed currency. Drafts and checks shall be accepted on account of payment only, with all pertaining interest, fees and charges (such as collection and discounting charges) to be borne by Buyer.

9.3 If Buyer fails to meet the terms of payment, Seller shall be entitled to charge default interest in the amount provided for commercial transactions under statutory law. The defaulting Buyer shall further bear all dunning costs, collection charges, reminder charges and lawyer's fees and other expenses arising prior to a lawsuit, including statutory VAT, connected with the collection of the outstanding invoice amounts. If Buyer violates the terms of payment, Seller shall furthermore be entitled at its discretion to demand either prepayment or security for any outstanding deliveries until receipt of all payments due under the contract, including all supplementary fees. In this context reference is made to section 7. of the General Terms of Delivery issued by the Association of the Austrian Electrical and Electronics Industries (*Elektro- und Elektronikindustrie*) as of November 2009.

10. Exclusion of Setoff

Buyer shall not be entitled to withhold or set off payment on grounds of any warranty claims or other counterclaims.

11. Retention of Title

Seller retains title to the delivered items until receipt of all payments due under the contract

including all supplementary fees (likewise all costs to be borne by Buyer and default interest, if any). Buyer shall take all actions required to secure the retained property and make the retention of title on the part of Seller evident in the form as requested by Seller.

Buyer is entitled to sell or process the goods delivered under retention of ownership in the ordinary course of its business operations.

If the goods delivered under retention of ownership are resold, irrespective of whether the goods have been processed, transformed or combined, Buyer hereby assigns its purchase price claim against its recipient (secondary buyer) to Seller to secure Seller's claim for consideration and undertakes on the one hand to inform Seller immediately of the name and address of the secondary buyer as well as of the reason and the amount of the claim arising from the resale and on the other hand to notify the secondary buyer of the assignment of the claim to Seller and to duly enter the assignment in its accounting records.

If the goods have been processed and the processing cannot be reversed, Seller will acquire pro-rata co-ownership in the goods in accordance with the (invoiced) values of the processed goods, including the value of Buyer's work performance. The consent to a resale or processing shall lapse if insolvency or reorganization proceedings are instituted against Buyer's assets or an application for the institution of bankruptcy proceedings has been dismissed for lack of assets. If the goods are attached or otherwise levied upon, Buyer shall draw attention to Seller's title and immediately inform Seller in writing of the attachment or levy.

12. Warranty

12.1 Once the agreed terms of payment have been complied with, Seller shall,

subject to conditions hereunder, remedy any defect existing at the time of acceptance (or time of readiness for dispatch) of the item/service in question whether due to faulty design, material or manufacture that impairs the functioning of said item/service. The contents of any brochures, technical descriptions etc. used by Seller shall not become part of the contract unless stipulated otherwise. Any public statements regarding the item to be delivered or the work (service) to be rendered by Seller, including without limitation in advertising or in the documentation accompanying the item/work shall not be binding upon Seller.

12.2 There shall be no warranty for any defects of the item/work that are already evident and/or identifiable to Buyer at the time the contract is entered into. To the extent that this can be reasonably expected, Buyer shall examine the item/work immediately after its acceptance and promptly notify Seller in writing by registered mail of any defects, including of any deficiencies and wrong deliveries; otherwise Buyer shall not be entitled to assert warranty claims.

12.3 Defects that cannot be identified in the scope of such thorough examination shall only be recognized to the extent that they impair the functioning under ordinary operating conditions and provided proper treatment and either are demonstrably defects in material that already existed at the time of acceptance (or time of readiness for dispatch) or result from Seller's inexpert manufacturing, laying or installation of the cables.

However, Buyer shall also promptly notify Seller in writing by registered mail of any of these defects. If Buyer uses cable sets supplied by third parties, it shall be refutably assumed that the defect results from such third party material.

12.4 Any notifications of defects pursuant to sections 12.2 or 12.3 must be made without undue delay, in the case of section 12.2 not later than 10 days of delivery (or time of readiness for dispatch), in the case of section 12.3 not later than 10 days after discovery and send to Seller by registered mail; otherwise such notifications shall be inconsequential and no rights may be deduced there from. The burden to prove that the item/work was defective or that the defect already existed at the time of acceptance (or time of readiness for dispatch) shall lie with Buyer, even if the defect is discovered within six months after the time of acceptance.

12.5 Buyer shall further forfeit all claims based on defects

12.5.1 if, after discovering a defect, Buyer prevents Seller from duly examining the defect or damage and its cause by means of its actions or failure to act, or

12.5.2 if the goods were used in violation of the relevant technical standards or statutory provisions, including without limitation the Electrical Engineering Act 1992 and the Electrical Engineering Regulation (*Elektrotechnikgesetz 1992 und Elektrotechnikverordnung*) respectively in the applicable version, or if the goods are not used by authorized expert

staff, including without limitation licensed electrical engineering technicians; or

12.5.3 in the case of non-compliance with instructions for assembly, commissioning and operation (such as contained in the instructions for use) or non-compliance with any licensing or other approval requirements.

12.6 Any claim existing in accordance with the above conditions shall be limited to the repair or replacement of the defective part to be performed by Seller within a reasonable time. All costs and work incurred or necessary in this context exceeding the repair or replacement of the goods as for example construction measures, earth moving or similar shall be borne by Buyer. Any replaced goods or parts thereof shall again become the property of Seller.

12.7 The warranty claim must be asserted in court within six months after acceptance, both in case of all defects of quality and defects of title, even if Buyer or its subsequent buyer has assumed a warranty vis-à-vis a consumer. These conditions shall also apply to any goods supplied, that are firmly attached to buildings or the ground. The period shall commence with

- a) the notification that the goods are ready for acceptance;
- b) the completion of the assembly;
- c) the acceptance
- d) the commissioning

whichever occurs first.

The warranty period shall not be suspended or interrupted in any event.

12.8A defect and its consequential damages that were caused by Buyer neither by gross negligence nor intentionally shall in no event give rise to damage claims. If there is a justified claim for damages (see below section 13.), Seller may at its discretion provide compensation in kind (rectification of defects or replacement) or in cash.

13. Liability

13.1 Seller shall not be liable for any damage due to acts of ordinary negligence, for immaterial or pecuniary damages. In the event of an act of gross negligence, Seller shall exclusively be liable for personal injuries. Seller shall in particular not be liable for any damage other than damage to the person (personal injury) or damage to the goods themselves (consequential damages) nor for loss of profits. Seller's liability for any damage caused by intentional acts shall generally be subject to the statutory provisions.

13.2 Seller shall be liable within the scope of the Product Liability Act (*Produkthaftungsgesetz*). Cables, cable sets and insulated lines may only be used in compliance with the relevant technical standards or statutory provisions,

including without limitation the Electrical Engineering Act 1992 and the Electrical Engineering Regulation (*Elektrotechnikgesetz 1992 und Elektrotechnikverordnung*) respectively in the applicable version or the provisions succeeding these regulations and only by authorized expert staff including without limitation licensed electrical engineering technicians.

13.3 Any damage claims shall be excluded in the case of non-compliance with requirements for assembly, commissioning and operation (such as contained in the instructions for use) or non-compliance with the licensing and approval requirements.

14. Mandatory Applicability to Third Parties

Any recipients (subsequent buyers) of Buyer shall agree in writing to be bound by all provisions regarding retention of title (10.) as well as the limitations of warranty and liability (12. and 13.) applicable to Buyer and undertake to equally bind subsequent recipients in the event of a further resale of the goods etc. Upon Seller's request, Buyer shall provide Seller with documentary evidence to this extent.

15. Applicable Law and Jurisdiction.

Unless otherwise provided for in writing, all legal relationships between Seller and Buyer shall

be governed by Austrian law as applicable to the legal relations of domestic parties excluding the referral rules of the International Private Law which would refer to any foreign law.

The contracting parties agree that any trade practices deviating from these Terms and Conditions as well as the application of the UN Convention on Contracts for the International Sale of Goods shall be excluded. Seller contracts and supplies – as long as Seller does not participate in a tender procedure of a contracting authority governed by Public Procurement Laws - exclusively on the basis of these General Terms and Conditions. Any deviating terms of purchase or general terms and conditions of Buyer shall in no event be accepted or become part of the contract.

Exclusive venue for both contracting parties shall be the competent court at Seller's domicile in Vienna.

16. Deviating Terms of Purchase

Deviating terms of purchase of Buyer shall only be valid if expressly agreed accordingly between Buyer and Seller in writing or Seller participates in a tender procedure of a contracting authority governed by Public Procurement Laws.

The invalidity of any of these General Terms and Conditions of Sale and Delivery shall not affect the validity of the remaining provisions. Seller and Buyer shall replace the invalid provision by such valid provision that comes closest to the intention of the original provision.