

Terms & Conditions of Glamox Aqua Signal GmbH (as of 14th February 2014)

1 Scope of these Terms & Conditions

1.1 These Terms & Conditions (T&Cs) apply exclusively to our contracts, deliveries and services including future transactions. Supplementary or deviating Terms & Conditions of our customers are only recognised by Glamox Aqua Signal if we have granted express CONSENT in writing.

1.2 Our T&Cs only apply to people who are exercising their commercial or self-employed professional activity in concluding contracts (entrepreneur as per section 14 German Civil Code (BGB)).

2 Offers, concluding contracts and condition of our products

2.1 Our offers are non-binding and subject to confirmation. All contracts are first concluded upon receipt of our written acceptance of order, at the latest upon handover of the product.

2.2 We confirm receipt of orders by immediately sending an email to the customer (order confirmation). This order confirmation does not represent any acceptance of the customer's offer, but rather merely informs them that we have received the order. We may accept the offer by way of issuing an acceptance of order or by delivery.

2.3 Our offer, our acceptance of order and these T&Cs are decisive regarding the content of the contract. Deviating agreements shall only be included in the content of the contract if we have expressly agreed this with our customer. Such agreements shall be made in writing. No oral agreements exist when the contract is concluded.

2.4 The characteristics and attributes stated in our offer and our acceptance of order apply as the agreed condition of our products. If we have shown or sent the customer samples before the contract is concluded the characteristics of these samples apply as the agreed condition. We are however entitled to make subsequent amendments to these which are required for manufacturing reasons and which are reasonable for the customer. This also applies to such amendments which result from a change in our sub-suppliers. We may also take into account technological advances. Characteristics and attributes which are different or additional than those stated in our offer and our acceptance of order only apply as the agreed condition of our products if these have been expressly agreed. Such agreements shall be made in writing.

2.5 Product descriptions in documents other than our offer and our acceptance of order, such as diagrams and drawings, are to be understood as merely approximations from which we may deviate to an extent which is reasonable for the customer within the our usual tolerance range unless they are not expressly marked as binding.

2.6 We retain title to all documents provided to the customer (drawings, calculations etc.); they may not be made available to third parties without our written permission or used by the customer in any other way.

2.7 Clarifications made by us regarding the condition of the product only represent a warranty of quality or durability if these are expressly designated as a warranty of quality or durability. In the event of a breach of warranty the customer's rights are solely those set out in the warranty statement. The warranty statement shall be made in writing.

2.8 The customer may view these T&Cs before submitting their order on the website. These T&Cs are available on our website and can be viewed, printed or downloaded and if expressly requested by the customer, sent by email or fax.

3 Additional services

3.1 If the customer purchases products from us, our services do not include either initially planning the product or advising the customer about the suitability of the product unless we have expressly agreed otherwise with the customer in writing. Agreements about additional services shall be made in writing.

3.2 If the customer commissions us with designing and planning a certain product, the customer shall provide us with a specification sheet with all specifications which the product should possess. The specification sheet must contain all information required for our designing and planning, in particular information about the planned intended purpose of the product and the quantity the customer requires. The specification sheet shall be dated and signed as legally binding by the contracting parties. This also applies to alterations to the specification sheet. We are prepared to help the customer draw up the specification sheet on request. However the customer is solely responsible for the completeness and accuracy of the specification sheet.

3.3 The parties shall mutually draw up a schedule for rendering our services and the customer's cooperative measures. The customer shall appoint a contact person who may make decisions at short notice regarding the product being developed and whose declarations are binding on the customer.

3.4 We require the timely and complete transfer from the customer of all documents required by us for designing and planning the product e.g. specification sheet, architects' drawings, statements from approving authorities, amongst others in order to be able to properly render performance.

3.5 Subsequent requests for alterations by the customer and deviations from the specification sheet shall be examined by us to see whether and under what conditions they can be implemented. Our performance and delivery obligations are suspended during the time of examination. Should the customer's request for alterations require a comprehensive review we may charge the customer for the costs incurred for this. After the review has been completed we shall inform the customer immediately whether we consent or not to the alterations. Subsequent alterations and supplements shall however only form part of the content of the contract if an express agreement regarding this is made and this agreement also contains provisions changing our remuneration regarding our designing and planning, the unit price of the product and the original service and delivery deadlines. Such alteration agreements shall be made in writing.

3.6 We shall give the customer the results of our planning in the agreed format. Should a certain format not be agreed we shall make a decision.

3.7 We have properly rendered our design and planning services in full when the product we have designed corresponds to the specifications in the specification sheet. The customer shall confirm this within one week of transfer after handing over the documents stated in section 3.6. If the customer does not give such a confirmation within one week our services will be deemed to have been accepted by the customer unless the customer notifies us within the period stated above in detail about how our service has deviated from the specification sheet (sending the notification on time is sufficient).

4 Prices and payment

4.1 Our authoritative prices are those prices stated or confirmed by us within the validity of our offer or price list. Prices are net ex works, excluding packaging and transport insurance which will be invoiced separately. Packaging shall be calculated at cost price. Packaging is unreturnable.

4.2 If products have been custom-made for the customer and the customer later orders less product than what we have taken as a basis for development, manufacturing or procurement, we are entitled to charge a reasonable increase on the price of the product the customer actually buys. This price increase will be based on our increased initial costs and lost profit. In addition we are also entitled to increase prices in accordance with actual additional expenditure if the information from the customer or in the specification sheet is incorrect or incomplete or if the customer does not carry out their contractual cooperation measures and this causes us additional expenditure.

4.3 Additional services such as planning, designs, light calculations and drawings shall be charged on a time and material basis unless we have agreed anything to the contrary with the customer.

4.4 We are entitled to change our prices and remuneration notifying the customer before delivery is carried out or services are rendered in the event of an increase in costs for which we are not responsible (e.g. exchange rate fluctuations, increases in the price of raw materials, wages and taxes) to the extent of the cost increases however no higher than the extent of the general price increase taken by us.

4.5 New customers - at the choice of the customer- shall on principle only pay by advance payment.

4.6 The customer must make payment without discount within 12 days from the date of invoice to an account specified by us. Special terms, in particular cash discounts, require special agreement. The date the payment is received is deemed to be the date the funds are available for all types of payments.

4.7 In the event of a delay in payment we are entitled to default interest in the amount of 10% unless the customer can provide evidence of lesser damages. However the minimum amount of default interest is 8% above the base rate as per section 288 BGB. We reserve the right to assert a claim for further damages.

4.8 If we on the grounds of a separate agreement accept bills of exchange subject to receipt instead of payment, the discount calculated by us for bills of exchange from out of town banks and withdrawal charges will be passed on.

4.9 With regard to our payment claims the customer is only entitled to retention and offsetting if the customer's counterclaims have been legally determined or acknowledged by us.

4.10 If it becomes apparent that our claims for payment are threatened by defective performance of the customer we are entitled to make all payments from the whole business arrangement with the customer, which are not yet due, due immediately, provided that we have already affected our deliveries and performance. This also applies if we have already accepted cheques or bills of exchange. This circumstance will occur when information from a bank or credit reference agency suggests that the customer is unworthy of credit. The same shall apply when the customer defaults on payment for at least two invoices. In addition to the provisions in section 4.1 we are also entitled to set a reasonable deadline for the customer in which the customer must either at its discretion make the payments or provide security concurrently against the outstanding deliveries and performance. If this is not carried out by the deadline we may withdraw from the contract. If the customer suspends payment or has an excess of liabilities over assets we do not have to set an additional deadline for compliance.

5 Service and delivery periods

5.1 Agreed periods do not commence before the customer has provided the required documents, permits from the authorities, leases, specifications/specification sheet, agreed deposits or other cooperation obligations of the customer.

5.2 Unforeseeable or unavoidable events or events for which we are not responsible (e.g. operational disruptions caused by force majeure, strikes or lockouts, difficulties obtaining materials or energy, transport delays, shortage of labour, energy or raw materials, actions taken by the authorities and difficulties in procuring permits, in particular import and export licences) shall extend the delivery period for the duration of the disruption and its effects. This also applies if the disruption takes place at our sub-suppliers or is due to an existing delay. If the disruption is more than temporary both contracting parties are permitted to withdraw from the contract. Claims for damages are excluded in these cases stated here in section 5.2.

5.3 The delivery period is deemed to have been adhered to if the delivery item leaves the factory before the expiry of the delivery period or, if the customer has arranged collection, the customer has been notified that the delivery item is ready to be collected within the delivery period.

5.4 In the event of unforeseeable events and obstacles to delivery or performance for which we are not responsible (e.g. operational disruptions, strikes, lockouts, delayed or non-collection upon timely conclusion of a matching cover transaction [kongruent Deckungsgeschäft]) the affected delivery or performance period shall be extended for the length of the obstacle. In such cases we are entitled to cancel the contract and hereby obligated to immediately inform the customer about the unavailability of delivery or performance and to immediately refund any counter performance provided by the customer.

5.5 If the delivery of the products ordered is delayed at the request of the customer or as a result of other circumstances caused by the customer the customer shall be charged the costs resulting from storage. In the event of storage we are authorised to claim 0.5% of the invoice amount for every month of storage commenced, however a minimum of €100 per delivery. We are also entitled to otherwise dispose of the delivery item after the fruitless expiry of a reasonable grace period and to supply the delivery item ordered by the buyer or one of the same type to the buyer within a reasonably extended delivery period.

6 Delivery

6.1 Deliver is EXW (Incoterms® 2010) from the Bremen factory and even if we have undertaken other performance e.g. shipping costs. This also applies to carriage paid deliveries. We undertake no responsibility for the cheapest shipping for delivery ex works.

6.2 For shipments abroad we will supply material and weight specifications on request. We reserve the right to deviate from our usual margin of fluctuation provided we have not confirmed individual attributes as binding in writing. We accept no responsibility for compliance with foreign packaging and customs regulations etc.

6.3 We reserve the right to make surplus or short deliveries up to an amount of 10% of the invoice value.

6.4 We are entitled to subdivide and invoice partial deliveries separately at our discretion and after correspondingly notifying the customer, provided that the customer does not reject this as unreasonable within a week from receipt of our notification of partial deliveries without giving reasons.

6.5 Products delivered by us are to be used and to remain in the country of delivery agreed with the customer. In particular technical products, hardware and computer software may be subject to embargo regulations and exporting them from the country of delivery may be prohibited or subject to authorisation. In addition we may be contractually obligated to comply with export bans. The customer is responsible for these regulations being adhered to at their own cost until the products reach the end consumer. In particular it is the customer's responsibility to inform himself about the current applicable export and import regulations (e.g. at the German Federal Office for Economics and Export Control [Bundesamt für Wirtschaft und Außenkontrolle] and the US Department of Commerce, Office of Export Administration), these T&Cs and to comply with any export bans mentioned by us and to obtain the necessary permits himself. We hereby expressly advise the customer that we are not obligated to inform them of any export bans. Such information does not release the customer from his own obligation to find information.

6.6 For deliveries within the EU the customer is obligated to immediately confirm receipt of the delivery by way of a "Gelangenbestätigung" (confirmation of arrival) in a suitable format. The customer shall be liable for damages occurred by us in the event that the Gelangenbestätigung is not properly received or not received on time.

7 Transfer of risk

7.1 Risk of accidental loss or accidental damage to the product transfers to the customer when the product is handed over to the carrier or haulier. We shall only take out transport insurance if agreed separately. In this case the customer shall bear the costs.

7.2 Delivered products shall be accepted by the customer without prejudice to their rights under section 9, even if the goods have minor defects.

8 Intellectual property rights

8.1 We retain title and the copyright to all diagrams, drawings, other documents and information. These may only be made available to and used by third parties with our consent.

9 Rights and responsibilities of customer in the event of defects in the product

9.1 The customer shall notify us of any visible defects immediately, no later than within 5 working days following delivery. Hidden defects shall be reported immediately after they are discovered in writing. This obligation to examine the goods and to report defects also applies to products which are packaged for onward transport. The customer cannot rely on defects reported late.

9.2 Damage to transportation packaging and obvious transport damage are to be immediately reported to the transport person and if possible they are to confirm the damage.

9.3 Costs of supplementary performance which are incurred because the purchased item is taken to a location after delivery other than the commercial delivery address of the customer shall not be undertaken.

9.4 If the customer selected the delivered product themselves and it later emerges that the product is not suitable for the customer's requirements this is not classed as a defect.

9.5 In addition the customer does not have the right to make a defect claim if the contractual product is damaged as the result of unsuitable or improper use, incorrect installation and/or commissioning, altering the goods or replacing parts which do not correspond to the original specifications, other than incorrect or careless treatment, natural wear and tear, using unsuitable equipment or replacement materials or use outside of the temperature range stated by the manufacturer and/or non-adherence to the maintenance and service procedures to be carried out by specialist trained staff as prescribed by the manufacturer.

9.6 In the event of justified and timely defect notifications the customer's claims are initially restricted to supplementary performance. This does not apply if supplementary performance is unreasonable for the customer. In the event of supplementary performance we can choose between remedying the defect or replacing the goods. Should supplementary performance fail or if we refuse to carry it out, the customer is entitled to exercise their other statutory rights in the event of defects subject to the following sections.

9.7 The customer does not have the right to withdraw from the contract in the event of minor defects.

9.8 When returning the goods in the course of a defect warranty the requirements for returns stated in section 10.3 of these T&Cs shall be adhered to.

9.9 The exclusions and restrictions on liability in section 11 apply to customer's claims for damages in the event of defects.

9.10 If only one product out of several delivered is defective, the customer's statutory rights to withdraw from the contract is restricted to the defective product. This also applies if the products were sold as items belonging together unless the defective part cannot be separated from the rest without damage or the customer demonstrates that this would be unreasonable for them.

10 Right of return, returning goods

10.1 Goods may not be returned without prior agreement and without giving reasons. We shall charge 25% of the value of the goods to cover return costs. This does not apply to goods returned under a defect warranty as per section 9.

10.2 The following products may not be returned: consumables (e.g. batteries, light bulbs), cables which have been cut, special models and all products custom-made for a customer order. This does not apply to goods returned under a defect warranty as per section 9.

10.3 If it has been agreed that the goods may be returned the return must fulfil the following conditions:

- The RMA number shall be clearly affixed to the outside of the return. A returns slip is also to be included with the return. The customer will receive the RMA number and returns slip by email. Goods sent back carriage forward will not be accepted.
- The goods must not show any signs of use and must be returned in the original packaging.
- Products which have been opened or subsequently resealed or where the packaging has been damaged may not be returned or depending on the extent of the damage may be returned subject to a deduction from the purchase price. Send the goods back inside another box to avoid damaging or marking the original packaging or picking up sticky residues.
- All documents associated with the product e.g. certificates should also be included with the return.

11 Liability, exclusion of withdrawing from the contract in the event of breaches of certain obligations

11.1 We are liable without restriction in accordance with the German Product Liability Act (Produkthaftungsgesetz) for damage caused intentionally, for the fraudulent concealment of defects, for damage caused by the grossly negligent breach of a fundamental contractual obligation and for damages following an injury to life, body or health. In the same circumstances we are also liable in warranty cases.

11.2 Our liability for damages caused by gross negligence which is not covered by section 11.1 is restricted to compensation for foreseeable damages typical of the contract. Our liability for breaching a fundamental contractual obligation due to ordinary negligence is restricted to compensation for foreseeable damages typical of the contract.

11.3 We are not liable for damages caused by simple negligence apart from the situations stated in section 11.1 and 11.2.

11.4 These restrictions and exclusions of liability also apply to the liability of our organs and vicarious agents.

11.5 The customer's right to withdraw from the contract due to a breach of an obligation not regarding a defect in the product, for which we are not responsible, is excluded.

12 Limitation periods

12.1 Defect claims made by the customer have a limitation period of one year. The limitation period for claims made by the customer regarding a defect existing in a right in rem of a third party is ten years as the product will have to be returned.

12.2 Other contractual claims due to breach of obligations also have a limitation period of one year. This does not apply to the right of the customer to withdraw from the contract due to breach of an obligation for which we are responsible which is not due to a defect.

12.3 Likewise the limitation period for all other claims of the customer and warranty claims is one year.

12.4 Deviating from the above sections 12.1-12.13 the statutory limitation periods apply to the following customer claims:

- claims made under the German Product Liability Act (Produkthaftungsgesetz) and those resulting from damage to life, body or health or breaches of fundamental contractual obligations,
- claims made regarding damages resulting from an intentional or grossly negligent breach of an obligation by ourselves or our vicarious agents,
- claims made in the event of fraudulently concealing a defect,
- claims to reimbursement of expenses as per section 478 (2) BGB.

12.5 Our claims against the customer are subject to the statutory limitation periods.

13 Retention of title

13.1 We retain title to the product until all our claims against the customer arising now or in the future on whatever legal grounds have been fulfilled (including the settlement of all current account balances). Products to which we hold (joint) title shall be referred to as goods subject to retention of title.

13.2 Processing, modifying and mixing are always carried out for us as the manufacturer. Should our (joint) title cease as a result of combining the goods subject to retention of title with something to which we do not hold title it is hereby agreed that we shall have (joint) title in the single object in relation to the value of our goods subject to retention of title to the value of the other item at the time they are combined (invoice value). This also applies if the other item is regarded as the main item. We accept the assignment of our share. The customer shall safeguard our goods subject to retention of title for us free of charge.

13.3 The customer is entitled to process the goods subject to retention of title in the course of normal business activities and is further entitled to sell them, in particular to install them, provided that the customer is not in default with their payment obligations to us. Pledging and using the goods as security are not permitted.

13.4 Upon conclusion of the contract the customer shall straight away assign to us existing and future claims (including the settlement of all current account balances) of the customer arising from further processing and onward sale of the goods subject to retention of title, insurance claims and claims against third parties regarding damage, destruction, theft or loss of the goods subject to retention of title up to the value of the invoice amount of the processed and/or sold goods subject to retention of title by way of security. We accept this assignment. The portion of the claim assigned to us has priority. This applies in particular in the event that the third party has counteracted the obligation to pay the price to our customer due to a defect in the goods subject to retention of title. Reductions in price and offsetting claims for damages by third parties shall first be settled against the part of the claim which is not assigned to us.

13.5 In the event the goods subject to retention of title are sold on, the customer retains title to the goods subject to retention of title regarding their buyers until the purchase price has been made in full. The customer is not permitted to sell the goods subject to retention of title on to third parties if the purchase price claim from the resale is subject to a prohibition on assignment.

13.6 The customer is only authorised to collect the claims assigned to us in the course of normal business. This authorisation may be revoked. Partial payments are to be first settled against the part of the claim which is assigned to us. Collection of part claims assigned to us is first permitted once the remaining claim has been settled.

13.7 If the customer has also agreed a priority preferential assignment as per section 13.4 to the benefit of another commercial lender, section 13.4 applies provided that the customer may collect the partial claim assigned to us jointly with the preferential partial claims.

13.8 If the goods subject to retention of title are seized by third parties the customer shall inform them that the goods are subject to retention of title and immediately notify us.

13.9 If the customer acts contrary to the contract - in particular in the event of default on payment - or if our payment claims are endangered by defective performance by the customer we are authorised to withdraw authorisation to collect claims assigned to us. The customer shall notify us of the name of the debtor of the claims assigned to us if requested. If the customer assigns their claims from reselling the goods in the course of genuine factoring, the customer shall inform us of this. The customer shall hereby assign to us with immediate effect any payment claims against the factor obtained for the assignment in the amount of the claim to be secured.

13.10 The customer is entitled to request us to release claims if the value of our securities is greater than the claims to be secured by more than 10%. We shall decide which claims to release.

14 Data protection

14.1 We will only use information provided to us by the customer, such as name, address, telephone number, fax number and email address, for order processing and other contractual relations with the customer. Information shall not be passed on to third parties. Our data protection policy is in accordance with the German Data Protection Act (BDSG) and the Telemedia Act (TMG).

15 Choice of law, place of performance, jurisdiction

15.1 Contracts are exclusively subject to German law.

15.2 The sole place of performance for all obligations of the contractual parties is the place of our registered office. This is also the place of payment for the customer.

15.3 Bremen shall have exclusive jurisdiction for all disputes directly or indirectly arising from the contractual relationship if the customer is a registered trader (Kaufmann), a legal person under public law or a public law special fund. We also, however, have the right to file a claim against the customer in the customer's general jurisdiction.

15.4 Section 15.3 shall also apply in the event of cross-border supplies with regard to the international jurisdiction of the Bremen courts.