

General Terms and Conditions

Applicable to Products and Components

of

Duagon AG, of CH – 8953 Dietikon, Switzerland

1 General

1.1 The contract has been concluded upon receipt of written confirmation by Duagon that it has accepted the order (confirmation of order).

Duagon's offers are without obligation to it.

1.2 The payment terms, delivery conditions pursuant to Incoterms, delivery dates and pricing are detailed by Duagon in the order and confirmation of order.

1.3 EXW Incoterms 2002 shall apply in the event that no other delivery terms are otherwise specified in the confirmation of order. In the event that the Orderer has not indicated any shipping instructions, shipping shall be effected by way of courier at Duagon's option. All shipping charges shall be assumed by the Orderer.

1.4 All prices are quoted ex works, including packing (for shipment with a courier service) and excluding any discounts or other deductions. The prices specified in the confirmation of order shall apply. Prices are exclusive of value-added tax, which is charged extra.

1.5 Payment is due within 30 days of the invoice date unless specified otherwise in the confirmation of order.

1.6 These Terms and Conditions are binding when they have been declared to be applicable in the offer or confirmation of order. Terms and conditions of the Orderer deviating herefrom shall not be applicable unless they are expressly accepted by Duagon in writing in the confirmation of order.

2 Scope of Goods Supplied and Services Rendered

2.1 The goods supplied and services rendered by Duagon are exhaustively covered and definitively specified in the confirmation of order and these Terms and Conditions, including any annexes or attachments to these documents.

2.2 The services rendered and the characteristics of the products or components supplied are exhaustively covered and definitively specified by Duagon in the specification sheets, with any other warranted characteristics being expressly excluded. The specification sheets in effect and specified at the time of ordering are definitive. As a rule, the specification sheets are published by Duagon on its website. In the event this isn't the case or if the Orderer does not have access to Duagon's website, the Orderer can have the specification sheet pertaining to the products and components ordered sent to it.

Other particulars pertaining to the products and components shall not be binding unless the agreed otherwise by the parties hereto in writing.

3 Payment

3.1 Duagon will invoice the consignment or partial consignments upon delivery being effected ex works or upon notification to the Orderer of readiness of the items ordered for shipment. The payment due date/period specified in the confirmation of order shall apply.

3.2 Payments are to be effected in full to Duagon's domicile without any deductions being taken for cash discounts, bank charges, exchange costs, taxes, levies, customs, fees, import and export charges, etc. All bank charges shall be assumed by the Orderer. Payment shall be deemed to have been effected in a timely manner when the invoiced amount has been credited to Duagon's account within the payment period indicated on the invoice.

In the event that payment is late, the Orderer shall effect payment of interest in the amount of 0.3 % per week

of delay as from the due date specified on the invoice, this to be done without Duagon having to issue a reminder to this effect. Duagon expressly reserves the right to assert claims for compensation for any loss extending beyond this. In addition, Duagon retains the right to stop manufacture at its manufacturer for delivery of any and all outstanding consignments and to suspend delivery of the products until it has received payment in full for all outstanding invoices. In such an event Duagon also reserves the right to retroactively modify the payment terms for all deliveries ordered and effected and subject them to prepayment.

3.3 All of the deliveries effected by Duagon shall remain its property until it has received payment in full as provided for in the contract and these Terms and Conditions.

4 Delivery

4.1 The delivery date specified in the confirmation of order, and only this date, shall apply. The delivery date shall be deemed to have been adhered to by Duagon when the notification of readiness for shipment has been made to the Orderer by this time.

4.2 The delivery date shall be extended automatically as reasonable in the following cases:

a) when impediments arise which Duagon could not have avoided, despite exercising proper care and notwithstanding whether they arose on its side, the Orderer's side, or the side of a third party. Examples of such impediments include but are not limited to the following cases of force majeure: epidemics; mobilization of law enforcement and armed forces; war; insurrections; substantial interruption of operations; lock-outs, strikes or other concerted acts of workmen (whether of the parties or others); casualties or accidents; shortage of power, labor or materials; delayed deliveries or non-delivery by suppliers of the requisite raw materials, semi-finished or finished goods; essential components becoming defective; embargoes; acts or omissions on the part of government authorities; acts of God, natural phenomena and disasters; or any other causes, circumstances or contingencies beyond Duagon's control;

b) when the Orderer or a third party is in delay or default of completing work to be performed by them or of complying with their contractual obligations, particularly when the Orderer does not adhere to the payment terms.

4.3 The Orderer is entitled to assert claims for compensation for loss caused by delayed deliveries, insofar as the delay can be shown to be attributable to Duagon, and the Orderer can furnish proof of having incurred loss as the result of such delay. Any and all such claims for compensation for delay or default shall become null and void in the event that the Orderer is aided by way of a replacement delivery. Duagon shall not be liable for any loss extending beyond the extent of said compensation for delay or default.

The compensation for delay or default shall amount to a maximum of ½ % for each full week of delay, however no more than 5% in all, as computed on the payable contract price of the delayed part of the delivery. The compensation for delay or default shall not be payable for the first two weeks of delay.

Once the maximum of the compensation for delay or default has been reached, the Orderer shall grant Duagon a reasonable grace period in writing. In the event that this grace period is not adhered to for reasons not attributable to Duagon, the Orderer shall be entitled to reject delivery of the delayed portion of the delivery. If accepting partial delivery cannot be reasonably expected of the Orderer for economic reasons, it shall be entitled to rescind the contract and to demand reimbursement of any advance payments made. Any partial deliveries already effected shall not be affected by this rescission of contract.

4.4 The Orderer shall not have any rights or claims due to delay in delivery or rendering of services save for those expressly specified in section 4 hereof. This restriction shall not apply to fraudulent intent or gross negligence on the part of Duagon, however it does apply to the fraudulent intent or gross negligence on the part of persons employed or appointed by Duagon to perform any of its obligations.

5 Passage of Benefit and Risk

5.1 The benefit and risk shall pass to the Orderer upon delivery being effected ex works or upon notification to the Orderer of readiness of the items ordered for shipment. From this time on the consignments will be stored at the expense and risk of the Orderer at a rate of 0.1% per month as computed on the payable contract price.

- 5.2 Upon purchasing Duagon's products, the Orderer is granted the right to use them for their designated purpose, subject to all the rules and regulations pertaining to their use and maintenance. All other rights to the product, in particular Duagon's intellectual property rights, are Duagon's rights, and Duagon's rights alone, and are not transferred by virtue of the sale of its products.

In particular, the use of the software and firmware on other hardware is expressly prohibited. The following is also prohibited: reverse engineering, software pirating (use of the software and firmware on other products, copying or extracting the software or firmware, etc.). Any such acts shall result in all utilization rights pertaining to the products supplied to the Orderer becoming null and void, effective immediately, without the Orderer being entitled to any reimbursement of the purchase price.

6 Examination and Acceptance of Deliveries and Services Rendered

- 6.1 Duagon inspects and tests the products prior to shipment within the framework of the production testing conducted by it. In the event that the Orderer should want Duagon to perform testing and inspection extending beyond this, the type and extent thereof have to be specifically agreed upon, confirmed in the confirmation of order, and paid for by the Orderer.
- 6.2 It is recommended that the Orderer test the products itself to determine their suitability for the proposed purpose or use. This extends in particular to the integration of the products in designated systems and verifying whether the properties and characteristics indicated on the specification sheet are actually complied with in the system environment proposed by the Orderer. The products are not certified for use in applications relevant to security, consequently it is the duty of the Orderer to ensure, by taking suitable measures, that when using the products together with other products any malfunctions are prevented or compensated for by taking additional security measures.
- 6.3 The Orderer shall examine the goods supplied and services rendered by Duagon within a reasonable period of time and make notification to Duagon in writing of any defects within 30 days. In the event that the Orderer should fail to do this, the goods supplied and services rendered shall be deemed to have been accepted.
- 6.4 Duagon shall remedy the defects of which notification has been made to it pursuant to section 6.3 as quickly as possible, for which the Orderer is to afford Duagon the proper opportunity.
- 6.5 The Orderer shall not be entitled to any rights or claims for defects of any kind pertaining to the goods supplied and services rendered save for those expressly specified in sections 7 - 9 hereof.

7 Warranty / Liability for Defects

- 7.1 Duagon warrants that the product attributes and features as exhaustively covered and definitively specified in the specification sheet will be preserved for the duration of the warranty period. Any proof having to be furnished to show that the attributes and features of the product are adhered to is to be exclusively furnished in Duagon's facilities by way of a test set-up in accordance with the specified type test.

Duagon's warranty pertains exclusively to the product attributes and features stated in the specification sheet or to the features specifically stated in the confirmation of order (cf. Section 2).

Duagon's warranty and liability shall become null and void in the event that proof cannot be furnished showing that the products have been used for their designated purpose and in compliance with all of Duagon's rules and regulations pertaining to their use, operation and maintenance.

The following damage is excluded from Duagon's warranty and liability: damage as the result of natural wear and tear, improper maintenance, non-compliance with the operating instructions, operation in an impermissible area, excessive stress and loading, unsuitable production facilities, chemical or electrolytic influences, repair work not performed by Duagon, or other reasons for which Duagon cannot be held accountable.

- 7.2 The warranty period amounts to 24 months. It begins upon delivery ex works or upon notification to the Orderer of readiness the items ordered for shipment.

The warranty period can be extended to a maximum of 36 months at the request and expense of the Orderer. The costs therefor amount to 0.4 % per month, and thus to a maximum of 4.8 %, computed on the basis of the contract price of the entire delivery. The Orderer has to expressly request an extension of warranty, whereupon this is stated in the confirmation of order.

- 7.3 In the event that the Orderer asserts a defect pursuant to section 7.1, it shall document the defect so that Duagon is able to reproduce it within a reasonable period of time. In cases of doubt, the defect shall be deemed to have been caused by influence from without. In this case, the Orderer shall assume payment for repair or replacement. In the event that the Orderer asserts a defect, however Duagon tests the product and cannot find any defect which is attributable to it, the Orderer shall assume the costs of testing. The costs incurred by Duagon in troubleshooting and locating the defect will be invoiced by it on a time-and-means basis. However, a minimum lump-sum handling fee of CHF 150.00 is payable per repair case.
- 7.4 A serial defect is deemed to be present when at least 30 % of like products or components thereof are affected by similar causes of defect pursuant to section 7.1 and are found to be defective pursuant to section 7.3 during the warranty period pursuant to section 7.2. Defects which are found to be attributable to the software or are associated with the software, shall not constitute serial defects.

In the event that a serial defect occurs, apart from remedying the defect Duagon shall also be obligated, pursuant to section 7.5, to repair or replace all products featuring the same technical design, or components thereof, at its expense, including those which have functioned properly up until that time (e.g. design changes, replacement of a component by another, improved or more suitable component). This obligation shall apply to all products contained in the same order.

- 7.5 Duagon's warranty is limited to repair or replacement, at Duagon's option and in Duagon's facilities, of all components of the delivery which have become damaged or unusable despite proper use as prescribed. The Orderer must deliver the defective products to Duagon at its, the Orderer's expense, within the warranty period. As a rule, the repaired or replaced products are returned within 30 days upon being delivered to Duagon. Replaced components shall become Duagon's property.

The warranty period starts anew for replaced or repaired components and lasts 6 months as from replacement or conclusion of repair work. This period cannot be extended. However, it applies irrespective of any lapse of the warranty period pursuant to section 7.2.

The warranty shall elapse prematurely in the event that the Orderer or third party perform improper modifications or repair work or when, in the event that a defect has occurred, the Orderer fails to take all the measures necessary and suitable to minimize damage and doesn't afford Duagon an opportunity to remedy the defect.

- 7.6 The Orderer shall not have be entitled to any rights or claims for defects in material, design or manufacture or for the lack of warranted characteristics or for serial defects, save for those expressly specified in sections 7.1 to 7.5 hereof.

8 Exclusion of Further Liability on the Part of Duagon

- 8.1 All entitlements and claims of the Orderer resulting from warranty and liability as well as any other claims of the Orderer, irrespective of the legal grounds on which they are based, are exhaustively covered and definitively specified in the confirmation of order and herein. This means that any and all non-expressly indicated claims for compensation for damage or loss, reduction in the (purchase) price, and suspension or rescission of the contract pursuant to section 10.1 are precluded.

In the case of warranty or serial defects, the Orderer shall in no event be entitled to claims for compensation for any incidental, special, indirect or consequential damage whatsoever which does not arise directly in the items delivered as such, this including but not being limited to damages for loss of or non-realized business profits, business interruption, production down times, loss of use, installation and removal of components, loss of business information, loss of business, non-realized savings, interest losses, or any other pecuniary loss) as well as any and all other incidental, special, indirect or consequential damage.

- 8.2 Duagon only warrants the characteristics of the products pursuant to section 2 and does not assume any warranty for the suitability or fitness of its products in the Orderer's system environment. The Orderer, and it only, is responsible for integrating the products in its system environment.

8.3 This exclusion of liability shall not apply to fraudulent intent or gross negligence on the part of Duagon, however it does apply to the fraudulent intent or gross negligence on the part of persons employed or appointed by Duagon to perform any of its obligations. In addition, this exclusion of liability shall not apply in the event that it runs counter to mandatory legal provisions.

9 Replacement Parts

9.1 During the warranty period Duagon guarantees follow-up deliveries of functionally compatible products complying with the specification sheet.

9.2 Replacement parts are deemed to extend to all functionally compatible products which are capable of providing for the functionality of the original product in as similar a fashion as possible. However, no identicalness is guaranteed of the design, method of manufacture, or function. To be sure, the Orderer is cognizant of the fact that the longer the period of time between the original product/part and the replacement product/part, the more the latter deviates from the former and the more adaptations Orderer will have to make to the software and hardware of the adjoining products in the system environment.

In the event that, in order to use the replacement parts, adaptations also have to be made to adjoining products on account of technological advances, they shall be performed by the Orderer on its own responsibility. To this end, Duagon will make available to the Orderer the specification sheet of the replacement product/part.

9.3 The Orderer is cognizant of the fact that Duagon does not maintain any stocks of replacement parts unless this has been specifically agreed upon.

10 Rescission of Contract; Modifications and Amendments

10.1 The Orderer shall not be entitled to modification or amendment of the contract subsequent to it being concluded pursuant to section 1.2. The Orderer is obligated to examine the confirmation of order carefully and to notify Duagon in writing of any discrepancies within 48 hours upon receipt thereof. In the absence of any such notification, the confirmation of order shall be deemed to be the sole binding agreement between the parties hereto.

10.2 Either party shall be entitled to withdraw from the contract pursuant to section 1.2 within 5 days upon the conclusion thereof by way of giving written notice of termination without incurring any on-costs or consequential charges. Once this 5-day period has elapsed the Orderer shall no longer be entitled to withdraw from the contract and the Orderer shall hold Duagon harmless in the event that it wishes to withdraw from the contract whether in whole or in part.

10.3 Unless specified otherwise in the confirmation of order, the Orderer shall not be entitled to return or exchange products that have been supplied.

11 Governing Law, Venue

11.1 All legal relations between the parties hereto shall be governed and interpreted in accordance with the laws of Switzerland.

The applicability of the United Nations Convention on Contracts for the International Sale of Goods is expressly precluded.

11.2 The courts at Duagon's domicile shall have jurisdiction with regard to any and all disputes arising from or in connection with this contract with the Orderer.

However, Duagon shall be entitled to bring action against the Orderer at its domicile.