

General Terms and Conditions of Sale and Delivery (GTS)

Hamilton Storage Germany GmbH

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General Terms and Conditions of Sale and Delivery of Hamilton Storage Germany GmbH

(hereinafter called "Hamilton")

1 General

- 1.1 These general terms and conditions shall apply to all goods supplied by Hamilton to the customer.
- 1.2 These general terms and conditions of all goods supplied by Hamilton shall prevail over all other terms and conditions unless the said general terms and conditions have been varied, accepted, and acknowledged subsequently in writing by Hamilton.
- 1.3 Any deviation or supplementary conditions or any oral agreements made between Hamilton and the customer, especially in relation to the customer's general terms and conditions shall only be applicable if accepted and acknowledged in writing by Hamilton.
- 1.4 Hamilton reserves the right to amend these GTS at any time.

2 Quotations

- 2.1 Quotations shall only be binding if they contain a stated period of validity and upon approval of credit application per consent from the FINANCE DEPARTMENT of Hamilton.

3 Scope of delivery

- 3.1 The order acknowledgement is relevant for the scope and execution of the delivery. Additional performances or specifications not included in the order acknowledgement are charged separately.

4 Technical data and documents

- 4.1 Technical documents such as drawings, descriptions, illustrations, and data on dimensions, performance, and weight are for information purposes only and shall not imply any warranties.
- 4.2 Hamilton reserves the right to make any necessary changes.
- 4.3 All technical documentation and technical data remain the property of Hamilton and may neither be used for production purposes nor be made available to third parties.

5 Intellectual Property

- 5.1 Trademarks, designs, and projects remain the property of Hamilton. Without previous written consent, the reproduction, utilization, or handing over to third parties is prohibited.
- 5.2 Particularly, equipment must not be made available directly or indirectly (through drawings, diagrams, schematics etc.) to any third party without written authorization from Hamilton.

6 Payment Terms

- 6.1 Payment due NET 30 after invoice. A finance charge of 2% per month will be applied for each payment past due.

7 Delivery time

- 7.1 The tentative delivery time of a system will be stated on each quotation and will be confirmed or revised at the time of order confirmation.
- 7.2 The effective delivery time will be dependent upon multiple factors such as current resource workload, 3rd Party item delivery times, custom hardware creation times, custom software

application development time, transportation media availability.

- 7.3 Unless stated otherwise in the specific quotation terms above, the delivery time starts with the date the initial down-payment is received by Hamilton and ends when the shipment is ready for dispatch or is arrived at destination place, depending on the agreed Incoterms.
- 7.4 Compliance with the delivery time is conditional upon the customer fulfilling their contractual obligations, e.g. notification of all essential technical specifications, availability of samples, import permits, down payments, letters of credit, etc.
- 7.5 Delivery can be subject to prior receipt of an export license granted by Swiss authorities, potentially impacting the effective delivery time.
- 7.6 The delivery time is reasonably extended if one of the cases applies:
 - a) The information required by Hamilton for the performance of the contract is not received in time, or if the customer subsequently changes the contract thereby causing a delivery delay of the goods. All contract changes require revised Purchase Orders from the customer.
 - b) In cases of force majeure; whereas the force majeure clause of the International Chamber of Commerce (ICC), Paris (INCOTERMS) in the version applicable upon conclusion of the contract shall apply.
- 7.7 Any delayed delivery does not entitle the customer to any rights and claims whatsoever.

8 Acceptance/Termination

- 8.1 Unless otherwise agreed upon, acceptance shall be effected immediately after installation at the customer's premises. The customer shall inspect the goods within a reasonable period and shall immediately notify Hamilton in writing of any deficiencies. If the customer fails to do so, the goods shall be deemed to have been accepted.
- 8.2 The result of the acceptance has to be recorded in writing and signed by both parties. The acceptance is fulfilled as soon as the test results prove the specified quality and capacity.
- 8.3 In addition, acceptance shall also be deemed completed when:
 - a) Hamilton has satisfied its standard site acceptance conditions or exceptional conditions agreed upon in writing with the customer before acknowledgement of the Purchase Order by Hamilton.
 - b) As soon as the customer uses the goods in a non-acceptance test mode.
- 8.4 In case the acceptance date is delayed by the customer, Hamilton reserves the right to invoice the outstanding amounts 30 days after the originally scheduled acceptance date.
- 8.5 In case the delay asked by the customer exceeds 3 months, Hamilton will put the project on hold and fees will apply for resuming the work.

9 Customer Returned Goods

- 9.1 If a customer decides to return goods, a 20% restocking fee will be charged to the customer with the assumption that the original packaging is intact and used to return the product to Hamilton.
- 9.2 If the original packaging is not utilized, Hamilton has the right not to issue credit for the unit until a damage assessment is completed.

- 9.3 No credit will be given for returned customized products, third-party equipment, or other non-recoverable costs such as method development, training, project management, or application support.

10 Warranty

- 10.1 The warranty period is 12 (twelve) months from the installation date.
- 10.2 The warranty period either begins on the date of the first day of installation or after acceptance, if site acceptance conditions have been defined and agreed upon in writing by Hamilton and the customer before receipt of the system Purchase Order Hamilton from the customer.
- 10.3 If installation or acceptance is delayed due to reasons beyond the control of Hamilton, the warranty period shall end no later than 18 (eighteen) months after the shipment of the goods from Hamilton.
- 10.4 Upon written request from the customer, Hamilton shall quickly repair or replace, at its option, all parts which become defective or unserviceable if determined to be due to bad material, faulty design, or poor workmanship. Repair or replacement shall not prolong the original warranty period.
- 10.5 All returned parts that are replaced become the property of Hamilton.
- 10.6 Hamilton is responsible only for the cost of repair or replacement of defective parts.
- 10.7 The warranty expressly does not cover consumable parts, damage caused by normal wear, faulty maintenance, failure to observe the operating instructions, and installation not carried out by Hamilton as well as due to other reasons for which Hamilton is not responsible.
- 10.8 Hamilton shall make no representations or warranties or remedies whatsoever for supplies that are delivered by Hamilton but manufactured by third parties.
- 10.9 With respect to any defective material, design or workmanship as well as any failure to fulfil express warranties, the customer shall not be entitled to any rights and claims other than those expressly stipulated in this clause.

11 Liability

- 11.1 Subject to the mandatory legal provisions and the ones expressly stated under clause 10 above, all rights and claims of the Customer against Hamilton, its bodies, shareholders, employees, affiliates, agents or any persons with whom it performs its obligations, its subcontractors, suppliers, and designees for whatever legal ground shall be excluded to the maximum extent permitted by applicable law, especially, but not limited to, claims based on loss of production, damage caused by delays, loss of use, loss of or damage to data or data storage media, costs for recovery of lost or damaged data, lost profit and other direct, indirect or consequential damage even if the possibility of such damage has been expressly pointed out to Hamilton.
- 11.2 Enforceable Customer claims shall be limited to 5% (five percent) of the Customer's payments to Hamilton during the preceding 6 (six) months for the specific Supply under the respective individual contract. Parties are free to furnish proof of lower damage.
- 11.3 Subject to the warranty provisions as per clause 10 above, any possible Customer's claim for damages shall become time-barred within 12 (twelve) months after arising.

12 Indemnification

- 12.1 If the standard products sold under the present conditions are produced or modified according to the customer's specifications, the customer agrees to indemnify and hold Hamilton harmless from all lawsuits, judgments, claims, costs, and expenses, including but not limited to attorney's and accountant's fees arising in connection with patent infringement.

13 Software

- 13.1 The computer software programs remain the property of Hamilton. Hamilton grants the customer a non-exclusive license to use the proprietary software programs with the equipment specified in the purchase agreement and under the general terms and conditions specified herein.
- 13.2 Hamilton may declare parts of the software programs as PUBLIC and which parts will be free of restrictions.
- 13.3 Hamilton is not liable for the functionality of third-party components.
- 13.4 Hamilton will not be liable for delays, errors, or failures in performance due to causes beyond its control or operation by unqualified personnel.
- 13.5 Hamilton warranty expires immediately if changes in the setup of the equipment or the exchange of equipment the licensed software programs are operating take place without written confirmation of Hamilton.
- 13.6 In case of software program defects limiting the usability of the software programs, Hamilton will deliver corrections free of charge during the warranty period.
- 13.7 After the expiry of the warranty period, Hamilton will provide error maintenance and other support only if the customer agreed upon and entered into a maintenance and service contract.
- 13.8 Hamilton will provide the appropriate support during the installation and for the configuration of the software programs if the customer provides Hamilton access to the hardware and software. After installation, Hamilton will provide education and consulting services according to its current schedule of charges.
- 13.9 The customer will perform backup operations to protect himself from the loss of data due to any error conditions.

14 Applicable Law

- 14.1 All agreements between the Parties shall be governed by Swiss law, without any reference to the conflict of laws provisions. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.

15 Place of Jurisdiction

- 15.1 For the resolution of all disputes under or relating to this contract, the Parties shall submit to the exclusive jurisdiction of the courts having jurisdiction for Munich / Germany

The ordinary courts at the legal seat of Hamilton shall have exclusive jurisdiction for the judicial assessment of all disputes between the contracting Party and Hamilton. Hamilton shall however also be entitled to bring claims against the contracting Party before any other responsible court of law.