

## **Terms and Conditions**

### **1. General**

These General Terms and Conditions apply exclusively in commercial transactions with our Customers, who are business persons within the meaning of § 14 BGB (German Civil Code). Our deliveries are subject only to the conditions of sale, payment and delivery below, even if these Terms and Conditions are not referenced expressly in the course of on-going business relations.

Any additional or contradictory terms of contract by the Customer have no validity unless we have accepted these expressly in writing. If deviating agreements are made with the customer in a contract or supplement thereof, these agreements shall always take precedence over the corresponding provision in these General Terms and Conditions.

### **2. Conclusion and subject matter of contract**

Our quotations to customers are non-binding unless a validity period is otherwise specified. This also applies to parts of the quotation such as prices and delivery times, which are independently subject to variation. Orders from Customers are only considered as accepted if they have been confirmed by us in writing.

If we provide an expressly binding quotation including a validity period, the contract can only come into effect through formal acceptance by the Customer within the validity period. We shall no longer be bound to the quotation after expiration of the validity period. Acceptance by the Customer shall then constitute an offer which we can accept by written confirmation.

Verbal subsidiary agreements, promises, alterations or additions to the written contract, order confirmation or to these Terms and Conditions can only be effected by our Managing Directors or by staff with written authorization. If such agreements are met between the Customer and non-authorized staff, these shall become binding if we confirm them in writing.

All documentation relevant to the quotation, such as illustrations, drawings, statements of weight, dimension, power consumption and performance data are only approximations unless we expressly refer to them as being binding. We reserve our right of ownership and copyright over cost estimates, drawings and other documents and these may not be made available to a third party. We shall not allow a third party to access any plans marked as confidential by the Customer without the Customer's permission.

### **3. Scope of delivery and preliminary work**

The scope of delivery is determined by our written order confirmation or our binding quotation.

Technical alterations are permitted as far as these do not affect the suitability for the intended use.

Any safety or protective devices or other type of equipment that is required by law or stipulated by the authorities will only be included in the scope of delivery if this is explicitly agreed upon.

In all cases, even if we have undertaken to carry out assembly and commissioning at a lump-sum price, the scope of delivery will not include the following in particular: Digging and masonry work, lifting equipment, scaffolding, roof flashing, materials, installation work, connection of heating, gas, fresh water, waste water and electricity, as well as the installation of oil and gas burners, fire extinguishers, electrostatic systems and the like.

It is the Customer's responsibility to ensure that preliminary work is carried out in good time; this also includes unpacking the shipment.

### **4. Delivery, passing of risk and receiving**

We are entitled to make partial deliveries. Delivery is effected ex works, excluding loading. The risk shall pass to the Customer when the delivery items are made available for collection by the Customer or, in

the case of shipment, with the handover of the delivery items to the carrier. This also applies if we have assumed other payments or services, e.g. shipping costs or delivery and assembly.

Unless special arrangements have been made, the shipment of delivery items shall be carried out on behalf of the Customer at his expense and risk. At the Customer's request we can arrange, on his behalf and at his expense, for shipment insurance against theft, breakage, damage in transit, fire and water damage as well as other insurable risks.

If shipment is delayed due to circumstances beyond our control, the risk shall pass to the Customer with the notification of readiness for shipment.

## 5. Delivery period

Our delivery periods are always non-binding. If a delivery date has been expressly confirmed as binding, the delivery period shall not begin until receipt of our order confirmation, however, not before obtaining the documents, approvals, releases to be provided by the Customer, nor the receipt of any agreed payment, guarantee etc. Observance of the delivery time is subject to the purchaser's performance of his contractual duties.

The delivery period shall be deemed met if the delivery item has left our factory or its readiness for shipment has been communicated within the specified period. The delivery period shall be reasonably extended in the event of unforeseen obstacles that cannot be overcome despite reasonable effort on our part to comply with the specific conditions at hand, such as operational breakdowns, strikes, lockout, shortages of energy and raw materials and other events resulting from force majeure, irrespective of whether these circumstances occur at our factory or at our own suppliers. Neither shall we be held responsible for the above circumstances if they result during the course of an already existing delay. We shall inform the Customer immediately of the occurrence and expected duration of such disruptions. The delivery period shall be extended at least by the duration of the delays due to circumstances beyond our control.

If, as a result of these circumstances, it is no longer possible or economically reasonable for us to fulfil the contract, we shall be able to withdraw from it either completely or partially. The Customer is not entitled to any claims for damages due to such a withdrawal. If we exercise our right of withdrawal, we shall promptly notify the Customer of this when we are aware of the consequences of the occurrence. This applies even if an extension of the delivery period was initially agreed with the Customer.

## 6. Default of delivery, storage costs arising from default of acceptance

If the Customer suffers damage due to a delay caused by slight negligence on our part, he shall be entitled to compensation. This is fixed at zero point five percent (0.5%) for each full week of delay of the value of the part of the overall shipment which could not be used in time or in accordance with the contract. The compensation period is limited to ten weeks. Any further claims for damages shall be excluded. Our liability according to sections 9 and 10 of these Terms remains unaffected.

If we fail to meet binding delivery dates, the Customer shall be obliged to grant us, in writing, a reasonable period of grace before he is entitled to withdraw from the contract.

If shipment is delayed at the request of the Customer, he will be charged for any costs incurred from storage at our premises, commencing one month after the date of readiness for shipment. These costs shall amount to at least zero point five percent (0.5%) of the invoice value for each month. After the granting and fruitless expiry of an appropriate period of grace we shall, however, be entitled to otherwise dispose of the delivery item or to deliver the goods to the Customer within a reasonably extended delivery period.

## 7. Prices and payment

Prices apply ex works, excluding packaging. Packaging material will only be taken back if the Customer pays the return costs. The agreed prices are subject to the addition of the currently applicable statutory value added tax in Germany. Our invoices are due for settlement immediately without deduction. Any payment terms indicated on the invoice shall not delay the due payment date.

Should there be a rise in material or labour costs before the delivery date, we shall be entitled to pass on part of the cost increase to the price on the basis of our original price calculation.

If, after conclusion of the contract and prior to delivery of the goods, we should become aware of circumstances that give rise to doubt about the creditworthiness of the Customer at the time of entering into the contract, we may at our own discretion request concurrent payment with delivery or an appropriate security should the doubt still exist up to the delivery time. If the customer refuses the request for concurrent payment with delivery or to provide the requested security payment, we shall be entitled to withdraw wholly or in part from the contract. This also applies in the event of a legal change of debtor, should there be any justifiable doubt as to the creditworthiness of the new debtor.

The Customer shall not be entitled to set-off against our claims unless the counter-claims of the Customer are expressly acknowledged by us or are legally established.

## 8. Retention of title

### Current account

The delivery item remains our property until the fulfilment of all claims arising from the business relationship with the Customer. These shall include any future claims that may arise, also those from contracts concluded concurrently or later, as well as all current account balance claims due to us, now or in the future.

### Insurance and maintenance

Until transfer of ownership, the Customer shall treat the retained goods with due care and insure them sufficiently at replacement value against fire, water and theft, at his own expense and in our favour. The Customer must be able to provide proof of this insurance if required. All claims against the insurer from this contract with regard to the delivered, retained goods shall be considered as assigned to us; we herewith accept the assignment.

The Customer shall arrange for any necessary maintenance and inspection work to be carried out in due time and at his own expense.

### Resale

The Customer shall be entitled to resell the goods in the course of his ordinary business as long as he is not in default of payment. In the case of resale and reprocessing, the Customer shall reserve the right of ownership over a third party.

The Customer hereby assigns to us all claims from the relevant legal transaction to the amount of our invoice value, including all ancillary rights, which he has incurred against the purchaser or a third party arising from the resale. This shall be irrespective as to whether the retained goods are resold without or after processing; we herewith accept the assignment. The Customer shall also be entitled to collect these receivables after the assignment until we revoke that right, which we may do at any time.

We shall undertake not to collect these receivables as long as the Customer duly meets his payment obligations. If requested, the Customer shall be obliged to inform his purchasers about the assignment and to provide us with all necessary information and hand over any relevant documents for us to assert our rights vis-à-vis the purchasers.

### Further processing, intermixture, combination

Any treatment or processing of retained goods shall be effected on our behalf as manufacturer, as defined in § 950 BGB (German Civil Code), but without any obligation for us. The processed items shall be considered as retained goods as defined by these terms. If the retained goods are processed with or inseparably mixed with items which are not our property, we shall be entitled to co-ownership of the new object in proportion of the invoice value of the retained goods to the invoice value of the other items used at the time of processing or mixing. Our joint ownership rights which thus arise are considered as goods of retained ownership within the meaning of these terms and conditions. If our goods are combined or mixed with other movable items to become essential parts of a uniform object and if this other object is seen as the main object, it shall be agreed that the Customer shall assign us proportional co-ownership, as far as the main object is his property. Moreover, the same applies to goods created by processing, combination or mixing as for the retained goods. If the retained goods are integrated or installed on the premises of a third party or otherwise, the Customer shall assign to us in advance the first part of his payment claim for the services or his claim on whatever legal grounds, to the amount of the invoice value of the retained goods; we herewith accept the assignment. Should the value of the existing securities to which we are entitled exceed our claim by more than 10 % in total, we shall undertake to release securities at our own discretion if requested by the Customer or any third party affected by the over-collateralization.

#### Pledges and intervention by a third party

The Customer is not entitled to pledge or use the delivery item as security. The Customer shall be obliged to notify us immediately of seizure, attachment or other disposal by a third party.

#### Surrender

Any important breach of contract, in particular default of payment, shall entitle us to take back the goods after we have granted a reasonable period of time or issued a reminder. The taking back, the request to return or the seizure of the retained goods shall constitute a withdrawal from the contract and shall oblige the Customer to surrender the retained goods. For this purpose the Customer shall be irrevocably obliged to grant us or our appointed party access to the premises where the retained goods are located. The Customer shall ensure that, until the goods are surrendered, all goods owned or co-owned by us shall be stored separately from other items, marked as our (joint) property and that they shall not be placed at anyone's disposal. The Customer shall also provide us with a list of all items making up our (joint) property.

After taking back the goods, we shall be entitled to sell or auction them directly without any fixed period of time. The return of the retained goods shall be effected to the amount of the proceeds obtained, after deduction of the realization costs, not exceeding, however, the agreed delivery costs. We reserve the right to make further claims for damage, particularly for lost profit.

#### 9. Warranty

##### Notice of defects

The Customer shall carefully inspect the delivery item immediately after receipt. Should any defects be found, these are to be notified to us without delay in writing (also per telefax or e-mail) in order for a claim to be valid.

##### Subsequent performance

All parts which at the time of passing of risk showed any fault, particularly as far as construction, material or assembly are concerned and which have become unusable or extensively impaired in use within 12 months of commissioning and at the latest 24 months after hand-over of the delivery item, shall be repaired or replaced free of charge.

In the event of a justifiable claim, we shall be entitled to decide whether to remedy the defect or provide a replacement free of charge within a reasonable period of time. Should we choose to supply a replacement, the defective item shall first be returned to us. We shall not accept liability for the consequences of any improper modifications and/or repair work carried out on the goods by the Customer or a third party.

The Customer shall give us or our appointed third party the required time and opportunity to carry out all rectifications and replacement deliveries that appear necessary to us, otherwise we shall be released from the warranty. The Customer shall only be entitled to remedy the defect himself or through a qualified third party and demand reimbursement of the costs from us if circumstances make such action necessary, i.e. urgent cases of danger to operational safety and the prevention of excessive damages, whereby we should be informed of this immediately, or if we are in default with respect to remedying the defect.

We may refuse to remedy defects as long as the Customer himself is in breach of contractual obligations or fails to fulfill these in accordance with the contract. The Customer shall be obliged to provide the services on site for rectification or replacement delivery to the same extent as for the main order. Parts replaced shall become our property. Failure of subsequent performance

The Customer shall be entitled to withdraw from the contract or to demand a reduction of the purchase price if the attempts at subsequent performance have failed twice or we have earnestly and definitely refused to provide subsequent performance, even though the Customer has given us a reasonable period of time for the subsequent performance. In the event of a withdrawal, we shall be entitled to claim compensation for use in accordance with §§ 346, 347 BGB (German Civil Code) from the Customer.

#### Exclusion of warranty

Our warranty obligations shall not apply in the event of unsuitable or improper use, or where defects are a result of incorrect assembly and/or start-up by the Customer or unauthorized third party. Neither shall we provide warranty in cases of natural wear, faulty or negligent handling, particularly overuse, use of unsuitable equipment or substitute materials. Further, we shall not grant warranty in cases of inadequate construction work not carried out by us, unsuitable foundation preparation, chemical, electrochemical or electrical interference, unless these are attributable to negligence on our part.

#### 10. Liability

Our liability shall be unlimited under statutory provisions in cases of injury to life, limb or health and in accordance with the Product Liability Act, also in the case of willful negligence on our part or on the part of our vicarious agents or representatives.

In all other cases, our liability shall be limited to average foreseeable damages typical for this type of contract. As far as only negligible breach of duty on our part or on the part of our vicarious agents or representatives applies, we shall only accept liability for the average foreseeable damages typical for this type of contract if there has been a breach of duty intrinsic to the contract.

We shall not accept any liability for damages by the defective goods to the Customer's other legally protected interests, e.g. damages to other objects, reimbursement claims for expenses or loss of use during the period of subsequent performance, unless Section 1 applies or we, or our vicarious agents or representatives, are guilty of gross negligence. In the event of liability, the compensation shall be limited to the average foreseeable damage typical for this type of contract.

In the event of recourse for liability for defects according to Section 9 or due to a breach of duty according to the aforementioned provisions in Section 10, a contributory negligence on the part of the Customer shall be appropriately considered.

The above provisions shall not imply a change in the burden of proof to the detriment of the Customer.

#### 11. Contract documents, property rights

We reserve our right of ownership and copyright over all contract documents. The Customer may not copy or pass on these documents to a third party without our permission, even when these documents are not marked confidential. This also applies to patentable inventions and utility models etc., even if they have not yet been registered. The reproduction of our products is only permitted with the written approval of the management.

#### 12. Place of performance, place of jurisdiction, applicable law

If the Customer is an entrepreneur within the meaning of the German Commercial Code (HGB), a legal person under public law or a public separate estate, the location of our registered office in Herxheim, Germany, shall be the sole place of performance and jurisdiction for all disputes arising from this contractual relationship. We shall be entitled to bring an action at the Customer's own place of jurisdiction.

Our legal relationships with our customers are subject solely to the Law of the Federal Republic of Germany, to the exclusion of the UN Sales Law (CISG).

Herxheim, 01.09.2011

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