

**Sec. 1 General**

- 1.) Deliveries, services and offers of the Seller are made exclusively on the basis of the present Terms of Sale. They apply to all future business transactions also if not explicitly agreed subsequently. The present Terms are considered accepted latest on receipt of the goods or service. By way of precaution, reconfirmations of the Buyer citing his own terms of purchase or sale are hereby denied.
- 2.) Discrepancies from the present Terms of Sale are valid only when confirmed by the Seller in writing.

**Sec. 2 Offer and Contract Conclusion**

- 1.) Offers of the Seller are subject to confirmation and not binding. First offers are made as a rule free of charge. Acceptance declarations and orders must be confirmed by the Seller in writing to be legally effective. This also applies to supplements, amendments or subsidiary undertakings.
- 2.) Drawings, illustrations, measurements, weights or other specifications are binding only when explicitly agreed in writing. The Seller reserves the right of ownership and copyright to all documentation supplied by him. These may be passed on to a third party only with his consent.

**Sec. 3 Prices**

- 1.) If not agreed otherwise, the Seller is bound to the prices quoted in his offers for 30 days from date of offer. Only the prices quoted by the Seller in the order confirmation plus currently applicable value-added tax are relevant. Supplementary deliveries and services are billed separately.
- 2.) Prices are exclusive of freight and packing unless agreed otherwise.

**Sec. 4 Delivery and Performance Dates/Scope of Supply**

- 1.) The delivery dates and periods quoted by the Seller to merchants are not binding except when explicitly agreed otherwise in writing. Shipping dates are quoted subject to receipt of records and permits to be supplied by the Buyer as well as compliance with agreed payment terms.
- 2.) The Seller is not responsible for late shipments resulting from force majeure or events which render the shipment substantially more difficult or infeasible for the Seller even if delivery dates and periods have been bindingly agreed. They entitle the Seller to postpone the delivery or service by the duration of the obstruction plus an adequate lead time or withdraw from the contract in whole or in part with respect to the undelivered portion. If the obstruction lasts longer than three months, the Buyer is entitled after setting an adequate grace period to withdraw from the contract with respect to unperformed portions thereof. The Seller is at all times entitled to make partial shipments or provide partial services.
- 3.) The delivery is considered made on time if the product was shipped or collected by the agreed date. If the shipment is delayed for reasons attributable to the Buyer, the delivery date is considered met with the notification of shipping readiness by the due date.
- 4.) The scope of delivery is subject to our written order confirmation.
- 5.) The collection of all building code or other permits for the erection site is the exclusive responsibility of the Buyer.

**Sec. 5 Transfer of Risk**

- 1.) The risk passes to the Buyer as soon as the shipment has been handed over to the forwarder or has left the warehouse of the Seller. If the shipment is rendered infeasible without fault of the Seller, the risk passes to the Buyer with the notification of shipping readiness.
- 2.) If the shipment is delayed by fault of the Buyer, the risk passes to the Buyer with the notification of shipping readiness.
- 3.) If loading or shipping of the goods is delayed for reasons attributable to the Buyer, the Seller is entitled to store the goods at his discretion for account and risk of the Buyer, to take all measures deemed expedient for preserving the goods and to invoice the goods as having been delivered. The same applies if goods notified ready for shipment are not called off within four working days. Legal provisions on late acceptance remain unaffected.
- 4.) Shipment must be accepted by the Buyer also if affected by minor defects.

**Sec. 6 Acceptance**

- 1.) Acceptance tests are performed only when explicitly agreed in the contract. The resulting costs must be borne by the Buyer. In all other cases, the delivered products is considered accepted after it has been put into use for four weeks without giving rise to a justified and substantial claim in writing. Minor claims do not entitle to postpone or refuse acceptance.

**Sec. 7 Warranty**

- 1.) The Seller supplies a warranty for the delivered goods in line with the following provisions which contain definite warranty clauses without constituting a warranty in the legal sense. With commercial goods, possible warranties of the manufacturer remain unaffected by these Clauses.
- 2.) If the product is defective or lacks assured major properties or becomes defective during the warranty period due to manufacturing or material flaws, the Seller will supply at his option and excluding other warranty claims of the Buyer a replacement or repair. Multiple repairs are permitted.
- 3.) A prerequisite for the warranty is that the erection, installation and operation of the product is made by the Seller, by a dealer authorized by the Seller or by qualified personnel.
- 4.) The warranty period is 12 months and starts on the date of delivery. This period also applies to spare parts replaced during the warranty period. The warranty period for the original products not extended thereby.
- 5.) If technical spec sheets, documentation or instructions of the Seller are not followed or the product is modified, the warranty lapses except if the Buyer demonstrates that the claimed defect was not caused by any of the above.
- 6.) The Buyer must inspect the shipment promptly on arrival for shipping damage and promptly inform the Seller of any possible damage or loss. Visual defects must moreover be reported to the Seller in writing promptly but at the latest two weeks from delivery. Defective products must be retained for inspection by the Seller in the state at the time defect was determined or returned on demand on the latter. The Buyer bears the full onus of proof that all prerequisites for a claim, in particular the defect itself, the date of its determination and the submission of the claim by the due date are met.
- 7.) If the claim is justified, the Seller may at his option make supplementary performance by repair or replacement.
- 8.) If supplementary performance fails after an adequate grace period and a maximum of three attempts, the Buyer is entitled to demand at his option either a reduction of the price or rescission of the contract. The Buyer has no right of rescission if the non-contractual service is insignificant, in particular if the defect is minor.
- 9.) If the Buyer opts for contract rescission after failed supplementary performance due to a legal or physical vice, he is not entitled to an additional claim for compensation on account of the defect.
- 10.) If the Buyer opts for compensation after failed supplementary performance, the amount of the compensation shall be limited to the difference between the purchase price and the value of the defective product. This does not apply to breach of contract resulting from malicious premeditation by the Seller.
- 11.) In the absence of an explicit agreement to the contrary, the contractual state of the goods is the product description quoted in the order confirmation of the Seller. Public statements, recommendations or advertising do not constitute a description of the contractual state of the goods.
- 12.) When the Seller operates on the basis of customized specifications, liability for the suitability of the product for the intended purpose of the goods, their proper design, compliance with safety regulations and adequacy of the material is excluded.
- 13.) If the specifications of the Seller quoted in the order contain parameters which the Seller recognizes as critical or infeasible for production, the Seller shall notify the Buyer accordingly. The Buyer must in such a case review the objections of the Seller at his own responsibility. The Seller does not assume any undertakings or liability with regard to the suitability of possible alteration proposals to meet the intended purpose of the Buyer.
- 14.) The warranty does not include parts subject to wear and products damaged by improper handling, unauthorized operation or inadequate storage.
- 15.) During the warranty period, the Seller will at his option replace defective parts either by new parts or repair them provided the parts have not become defective as a result of any of the following:
  1. Typical wear
  2. Defects resulting from non-compliance with our technical spec sheets and other technical notices on the products and user manuals.
  3. Defects from failure to perform the operating and maintenance measures recommended by the Seller.
  4. Defects resulting from modifications or the use of foreign parts by the Buyer or operator.
  5. Defects resulting from adjustments of instrument calibrations performed by the Seller.
  6. Defects resulting from the late replacement of parts subject to wear.
  7. Defects caused by repairs or interference by unauthorized persons.
  8. Damage resulting from processing of abrasive or aggressive plastics, and corrosion resulting from improper handling or maintenance.
  9. Damage from the use of unsuitable refrigeration or temperature equalization media.
  10. Defects resulting from unauthorized use of products above pressure and temperature limits quoted in the technical documentation or on order issue.
  11. The warranty obligation lapses in the case of mechanical destruction, or of damaged or removed seals.

- 16.) The Seller is not liable for defects to objects other than the products subject to the warranty. The Seller is not liable for consequential damage, plant interruptions, delays slowdown of production or downtimes. Statutory provisions on product liability remain unaffected by these warranty clauses.
- 17.) Compensation claims against the Seller and his vicarious agents on account of infeasibility of performance, non-performance due to positive breach of contract, culpability at contract conclusion and from unauthorized acts are excluded except if the damage was caused by premeditation or gross negligence or involve injury to life, limb or health.

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#### **Sec. 8 Scope of Warranty/Place of Warranty Performance**

1.) Warranties are performed at our option by the gratuitous repair of defective parts or their replacement by flawless parts. Repairs at the erection site may be demanded only for firmly installed equipment of major size. Replaced or exchanged parts became our property. If the place of fulfilment is in a country other than the Federal Republic of Germany, the Buyer bears the travel costs and expenses from the German border.

#### **Sec. 9 Other Limitations of Liability and Exclusions**

- 1.) The Seller is not liable in the event of negligent breach of immaterial contract obligations.
- 2.) With other negligent breaches of contract, the liability of the Seller is limited to the average contract-typical damage foreseeable by product type. This also applies to negligent contract breaches by legal representatives of the Seller or their vicarious agents.
- 3.) The above limitations of liability do not apply to claims of the Buyer under the Product Liability Act or to injuries to life and limb attributable to the Seller or in the event of the death of the Buyer.
- 4.) Compensation claims of the Customer become time-barred in one year from date of delivery. This does not apply to claims of the Buyer under Product Liability Law or to injuries to life and limb attributable to the Seller or in the event of the death of the Buyer.

#### **Sec. 10 Reservation of Title**

- 1.) All delivered goods remain the unrestricted inalienable property of the Seller up to the fulfilment of all our claims. If reserved goods are sold, the claim resulting from the resale passes to the Seller. The Buyer undertakes to treat the goods with due care and to have possibly required maintenance and inspection works performed. The reserved goods must be insured against fire, theft and water damage at the expense of the Buyer. The insurance coverage must be based on the reprourement value of the goods. In the event of non-contractual conduct by the Buyer or the latter's default, the Seller is entitled to demand the surrender of the goods. A demand for the return of the goods does not constitute a withdrawal from the contract except if explicitly declared by the Seller. In the event of a return of the goods, the Seller is entitled to sell them elsewhere and deduct the sales revenue from the liabilities of the Buyer.
- 2.) The Buyer is entitled to resell the goods as part of its ordinary business transactions and as long he is not in default. The Buyer assigns to the Seller already at this time all claims up to the amount of the invoice (incl. value-added tax) generated by the resale to the third party. In this context, it is immaterial whether the goods were processed by the Buyer prior to the resale. The Buyer is entitled to collect the receivable also after the assignment. The Seller reserves the right, however, to collect the receivable if the Buyer should be in default or apply for the opening of insolvency proceedings. The processing of the products shall be made at all times in the name and on instructions of the Seller.
- 3.) If the product is processed together with other goods which are not owned by the Seller, the Seller acquires co-ownership in the newly produced products in a ratio of the value of his product to the value of the new product. This also applies to the blending of the product with other goods or objects not owned by the Seller. The Seller shall be promptly informed of any attachment of the product at the Buyer.
- 4.) In the event of non-contractual conduct of the Buyer, in particular default of payment, the Seller is entitled to retrieve the reserved goods at the expense of the Buyer or possibly demand the assignment of the surrender claims of the Buyer against a third party. The return or attachment of reserved goods by the Seller does not constitute a withdrawal from the contract. This does not apply if the Buyer is also the consumer.

#### **Sec. 11 Invoicing and Payment**

- 1.) If not agreed otherwise, all invoices of the Seller are due for payment promptly on invoice issue without deduction. First-time customers must pay in advance.
- 2.) Payment is considered made when the Seller can freely dispose of the amount. With cheques, payment is considered made when the amount of the cheque was credited to the bank account of the Seller and not debited against the account of the Seller within seven banking days.
- 3.) If the Buyer is in arrears with payment, the Seller is entitled to charge as of the respective date interest of at least 5 % above the respective basic interest rate as per Sec. 247 Subsec. 1 BGB plus statutory value-added tax.
- 4.) If the Buyer fails to meet his payment obligations, e.g. if a cheque or bill of exchange is not honoured or if he suspends payments or if the Seller learns of other circumstances which give rise to question the creditworthiness of the Buyer, the Seller is entitled to declare the entire balance due for payment immediately. In this case, the Seller is moreover entitled to demand prepayments or deposits on other contracts and/or after an adequate grace period withdraw from these contracts or demand compensation.
- 5.) The Buyer is entitled to offset only if his counterclaim is undisputed or declared legally final.

#### **Sec. 12 Data Protection**

- 1.) The business transactions are supported by a data processing system. Accordingly, customer data are entered into a file which is stored up to the end of the business relationship. The customer is advised of this storage. Legal basis: Secs. 27ff, 33 BDSG

#### **Sec. 13 Place of Fulfilment and Jurisdiction**

- 1.) The place of fulfilment for delivery and payment is 58566 Kierspe. If the Buyer is a merchant, legal entity of public law or a public-law special fund, the seat of the Seller is agreed to be the place of jurisdiction for both Parties for any disputes arising from contracts with the Seller. The Seller is, however, entitled to take out proceedings against the Buyer also at his ordinary court of jurisdiction.

#### **Sec. 14 Buyer With Seat Outside the Federal Republic of Germany**

- 1.) Transactions with customers with seat outside the Federal Republic of Germany shall be subject to the UN Convention on the International Sale of Goods (UN purchase law) except where amended or supplemented by the following clauses. Other terms of purchase are agreed excluded.
- 2.) Payments must be made in EURO if so agreed. If the Buyer fails to make payment by the due date, interest of 8 % over the respective basic interest rate of the European Central Bank may be charged as from the due date.
- 3.) If the goods are non-conforming, the Seller in departure from Art. 46 of the Convention is entitled to supply a replacement in lieu of repair. In this case, the Buyer must return the non-conforming goods for account of the Seller.
- 4.) Compensation on account of non-conforming goods must be paid by the Seller only if the Seller is liable for the breach of contract. The amount of compensation claims shall be limited to €25,000.

#### **Sec. 15 Saving Clause**

- 1.) If any provisions of these Purchase and Delivery Terms or a provision to be added in the future should be ineffective or infeasible in whole or in part or the validity or feasibility subsequently lapses or if an omission should be found, the validity of the remaining provisions shall not be affected. The place of the ineffective or infeasible provisions or to fill out the omission shall be taken by an adequate provision which as far as legally permitted comes closest to what the Contract Parties intended or would have intended by the spirit and purpose of Terms of Sale and Delivery if they had take the point into consideration. If the invalidity or infeasibility of a provision rests on a definition of performance or time (delivery date or term) quoted in it, the legally permitted value that comes closest to the provision shall be agreed in its place. This shall also apply to any individual provisions of the contract.