

**I. Scope of terms**

- 1.1 Our Terms and Conditions of Sale and Payment alone shall prevail. They shall take precedence over the Customer's conflicting or divergent terms, unless the latter have been expressly recognised by us in writing. We shall not recognize conflicting or divergent terms even when, despite knowledge of them, we unreservedly fulfil an order from the Customer.
- 1.2 Our Terms and Conditions of Sale and Payment shall also apply to all future transactions with the Customer. The version prevailing upon conclusion of the contract shall be authoritative.
- 1.3 All other agreements concluded by our representatives on our behalf require our written confirmation to the Customer in order for them to be effective.

**II. Nature and scope of the performance**

- 2.1 Our offers are not binding. A contract shall become effective only if we confirm in writing an order that the Customer places on the basis of an offer, or when we execute the order.
- 2.2 Our written confirmation of order or, if such does not exist, our offer shall be authoritative for the content of the contract, i.e. parts, accessories, services or collateral works not listed in the confirmation of order or in the offer shall not be included in the scope of our delivery.
- 2.3 Information in the documents pertaining to the offer, such as drawings, illustrations, details of weights, measures and breaking through etc. are only approximately authoritative, unless they are expressly designated as binding.
- 2.4 The offer is made with the proviso that the media used for operation of the plant (water, air etc.) are suitable for the intended purpose.
- 2.5 All collateral works (e.g. bricklaying, bracing, plastering, carpentry, excavation, electrical and painting work) are not included in the offer. If we execute them, they shall be compensated separately.
- 2.6 Assembly work that has to be executed or repeated for reasons not attributable to us shall be compensated separately.
- 2.7 After presentation of the confirmation of order or our offer, modifications to be carried out at the Customer's request shall be calculated separately.
- 2.8 If the Customer experiences unforeseen circumstances necessitating additional work exceeding the original scope of the order, this additional work shall be compensated by the Customer if it was necessary for performance of the contract and the Customer did not immediately contradict our notification to this effect.

**III. Prices and payment**

- 3.1 The prices in the offer shall apply only if all parts are ordered.
- 3.2 For deliveries of goods and provision of services rendered later than four (4) months after conclusion of the contract we may invoice any increases in wage costs and/or price of materials that have occurred after provision of the offer by means of an appropriate overhead premium.
- 3.3 Unless expressly agreed otherwise, the prices quoted are understood to be in euros ex works. Carriage, Customs duty and other necessary collateral expenses shall be borne by the Customer. The respective prevailing value added tax will be invoiced additionally. Packaging will be calculated at the cost price; it will not be taken back.
- 3.4 Unless expressly agreed otherwise, the following payment terms shall prevail within the Federal Republic of Germany:
  - a) For straightforward delivery: within thirty (10) days from receipt of invoice, in cash, without deductions.
  - b) For delivery plus assembly: within thirty (10) days from receipt of invoice, in cash, without deductions.
  - c) For orders with a value exceeding 5,000.00 euros, the Customer shall make appropriate stage payments on confirmation of order and advice of dispatch. The value of the stage payments will be stipulated separately on conclusion of contract.

- 3.5. Unless expressly agreed otherwise, for deliveries of goods and provision of services outside the Federal Republic of Germany, 1/3 of the agreed order value shall be paid on conclusion of contract, 2/3 by banker's guarantee from a first-class European bank after notification of dispatch readiness. Dispatch will not take place until written confirmation has been received from the bank that the banker's guarantee has been requested.
- 3.6. We are not obliged to accept bills of exchange. Cheques and bills of exchange shall be deemed payment only on the day they are credited to our account. Any costs incurred in this respect shall be borne by the Customer.
- 3.7. If the Customer is in default with payments, we shall apply default interest at the statutory rate.
- 3.8. The Customer shall be authorised to set-off and to assert rights of retention or the right to refuse performance respectively only if the Customer's counter-claims are determined either to be uncontested or *res judicata*. Assertion of a right of retention further requires that claims originate from the same contractual relationship.
- 3.9. If, after conclusion of contract, any facts become known to us that might raise doubts regarding the Customer's efficiency and which thus prejudice our entitlement to performance, we shall be entitled to make further execution of the order dependent upon advance payment in full or provision of appropriate securities, or to cancel the contract respectively after expiration of an appropriate period set by us for advance payment in full or provision of the security.

#### **IV. Delivery periods – Force majeure**

- 4.1 The delivery period shall commence at the earliest with dispatch of the confirmation of order but not, however, before the point at which clarification and agreement has been reached between us and the Customer on all technical details and contractual terms, and also not before receipt of an agreed down payment. If the Customer requires any subsequent modifications, the delivery period shall be extended appropriately.
- 4.2. Compliance with our obligation to effect delivery requires that the Customer not be in default of payment and that the Customer undertakes all the acts of co-operation necessary for delivery in accordance with the contract correctly and in good time. In particular, the Customer shall, at his expense, procure any and all the permits and documents necessary for execution and operation of the plant in good time. If we assist him in doing this, then the Customer shall also bear the costs incurred by us in so doing.
- 4.3 Compliance with the delivery deadline shall be deemed to have taken place if the delivery item has left our works or dispatch readiness has been advised by the time of its expiry.
- 4.4 Should we exceed the contractually agreed delivery periods, then we shall be granted a period of grace of at least three (3) weeks. If we are unable to effect delivery because our subcontractors have not met their contractual obligations, then we shall be entitled to cancel the contract if we have made reasonable efforts to procure the delivery items without success.
- 4.5 In the event of any delay in delivery exceeding the period of grace then, unless a case as described in paragraph 6 is present, the Customer shall be entitled to cancel the contract if he has associated specification of the deadline with the express declaration that after the period of grace has expired he will refuse acceptance of the performance.
- 4.6 If delivery is impeded by force majeure, then we shall be exempt from our obligation to render a performance plus an appropriate start-up time. This shall apply irrespective of whether the circumstances in question have occurred at our own works or at those of our subcontractors. Force majeure equates to any unforeseeable circumstances that cannot be ascribed to us that make delivery unreasonably difficult or temporarily impossible. Examples of this are labour disputes, official measures, power shortages and significant interruption of operations. Should these impediments last more than three (3) months, each party shall be entitled to cancel that part of the contract not yet fulfilled. In such a case, the Customer shall not be entitled to assert any claims for damages.

#### **V. Dispatch and passing of risk**

- 5.1 We shall be entitled to deliver partial quantities if the Customer permits. Objections to partial quantities do not release the Customer from the obligation to accept the remaining quantity of the delivery ordered in accordance with the contract.
- 5.2 Upon surrender of the delivery items to the carrier the risk shall pass to the Customer even if partial deliver-

ies are effected, or if we have assumed yet more performances e.g. dispatch costs or supply and installation.

- 5.3 If dispatch is delayed as a result of circumstances that cannot be ascribed to us, then the risk shall pass to the Customer with advice of dispatch readiness.
- 5.4 Wird der Versand auf Wunsch des Auftraggebers verzögert oder nimmt der Auftraggeber die Lieferung nicht ab, so sind wir berechtigt, die Liefergegenstände auf Gefahr des Auftraggebers einzulagern und, beginnend einen Tag nach Versandanzeige, die durch die Lagerung entstandenen Kosten, bei Lagerung in unserem Werk jedoch mindestens ½ % des Rechnungsbetrages für jeden Monat zu berechnen.
- 5.5 Wir sind berechtigt, unbeschadet weiterer Rechte, anderweitig über den Liefergegenstand zu verfügen und den Auftraggeber mit angemessener verlängerter Frist zu beliefern, wenn der Abruf der Lieferung innerhalb einer von uns gesetzten angemessenen Frist unterbleibt.

## VI Assembly

Unless expressly agreed otherwise, assembly shall be effected in accordance with our enclosed Terms and Conditions for Assembly and Assembly Tariff. They shall also form an integral part of the contract.

## VII Retention of title

- 7.1 Until payment in full of the purchase price and until fulfilment of all claims due to us arising from the business relationship with the Customer we shall retain the title to all the items supplied. In the case of a potential current account balance, we retain title until the balance has been settled; in the case of acceptance of bills of exchange or cheques until they are cashed.
- 7.2 If the right of retention of title is extinguished as a result of adaptation, processing, joining or mixing, then we shall become the owners or joint owners respectively of the resulting new items in proportion of the value of our items to that of the new items. The Customer shall take the latter into safekeeping for us. The Customer furthermore undertakes to assign to us any claims occurring as a result of loss of our right of retention of title or as a result of his new joint ownership.
- 7.3 In the event of behaviour by the Customer in breach of contract, in particular in the case of non-compliance with the agreed dates of payment, after expiry of an appropriate period of grace we shall be entitled to cancel the contract and the Customer shall be obliged to surrender the delivery items. If these have become a material component of a real property, the Customer undertakes to permit us removal of the items that can be disassembled without material prejudice to the solidium and to reassign title to these items to us. If the Customer breaches the abovementioned rights, then he shall be obliged to pay us compensation for damages. Disassembly and other costs shall be borne by the Customer.
- 7.4 The Customer shall be entitled to process and sell the delivery items supplied. Any claims against third parties arising from the resale are hereby assigned to us, without the need for a special agreement in individual cases.
- 7.5 If the Customer fulfils his payment obligations to us, then he shall be authorised to collect the assigned claims for our account in a fiduciary capacity. The proceeds shall be transferred to us immediately. The Customer authorises us now to advise the third party debtor of such assignment of claim(s).
- 7.6 The Customer shall not be entitled to pledge the delivery items subject to retention of title to any third parties, or assign them by way of security, especially to financing institutions, without our prior written consent. The Customer shall be obliged to notify us immediately of any influence by third parties on the goods or plant subject to retention of title or the claims achieved by sale thereof, especially by pledging. Reselling in bankruptcy is not permitted. Our rights arising from § 48 Ins. O. [German Insolvency Act] shall remain unaffected.
- 7.7 All delivery items subject to retention of title shall be insured against fire, water and theft. All claims against the insurer in this regard are hereby assigned to us.

## VIII Warranty

- 8.1 Assertion of warranty rights requires that the Customer has duly fulfilled his duty of examination and requirement to make a complaint in respect of a defect immediately on receipt of the goods in accordance with § 377 HGB [German Commercial Code].

- 8.2 We warrant that at the time of passing of risk the item ordered is free of defects and shows the agreed properties.
- 8.3 No warranty is assumed for normal wear and tear, nor for any damage as a result of incorrect or negligent use by the Customer or as a result of (even negligent) non-compliance with our Operating and Maintenance Instructions, or as a consequence of the use of any unsuitable equipment or because of inadequate construction work, force majeure or due to any other grounds that cannot be attributed to us.
- 8.4 If the delivery item has to be erected, then the warranty assumed by us for the presence of specific properties shall apply only if erection is carried out by us, or fitters instructed by us.
- 8.5 Assumption of warranties for the method of working or capability shall apply with the proviso that the prerequisites necessary to achieve the same, and to be rendered contractually by the Customer, have been fulfilled.
- 8.6 In the event of deliveries on the basis of third party specifications we shall warrant to the abovementioned extent for the performances requested in the specification and the function of the individual units. No liability is assumed for the accuracy and appropriateness of such data as part of planning or overall scheduling.
- 8.7 The Customer shall not be entitled to claim any rights due to minor defects. Furthermore the Customer may only request collateral performance and rework or substitute delivery at our discretion. The Customer shall give us the necessary time and opportunity for this after prior consultation with us. Replaced parts shall become our property. The right to completely refuse collateral performance under the prerequisites defined in § 439, para. 3 BGB {German Civil Code} shall remain unaffected. In the case of failure or refusal of collateral performance the Customer shall have the right to reduce the purchase price or cancel the contract, at his discretion.
- 8.8 The period of limitation for warranty claims is two (2) years for delivery items that have been used for a building in accordance with their customary method of use and which have caused its defectiveness, otherwise one (1) year. For straightforward delivery the period of limitation shall commence on the day of delivery; for delivery with assembly on the day of acceptance. If a delay should occur between delivery and commencement of assembly, for which we are not responsible, or should there be an interruption to assembly for which we are not responsible, the limitation period shall be deemed to have commenced on the day for completion of our performance provided in the contract.
- 8.9 §§ 478, 479 BGB [German Civil Code] shall remain unaffected.
- 8.9 The Customer's claims for damages due to the defect discovered shall remain unaffected by the above regulations. The pertinent restriction shall be guided by clause IX.

#### **IX Customer's claims for damages**

- 9.1 In the case of slight negligence, the Customer's claims for damages shall be excluded. In particular we shall not be liable for any loss of profits caused by slight negligence and any other pecuniary losses incurred by the Customer.
- 9.2 This exclusion of liability shall not apply to any claims arising from a warranty or in the case of injury to life, physical injury or injury to health; nor to any to claims in accordance with §§ 1 (4) of the German Product Liability Law nor for any slightly negligent breach of material contractual obligations. In the event of slightly negligent breach of material contractual obligations, liability shall, however, be limited to compensation of the typical loss predictable upon conclusion of contract. The same shall apply in the case of grossly negligent action by ordinary vicarious agents.
- 9.3 Insofar as our liability is excluded or limited, this shall apply also to the personal liability of our employees, other employees, representatives and vicarious agents.

#### **X Exercise of the Customer's rights**

- 10.1 If the Customer has set us an appropriate period for performance or collateral performance according to §§ 281, 323 BGB, and if this period has expired without success, then the Customer shall notify us in writing whether he claims damages instead of the performance, or cancellation of the contract respectively, within two (2) weeks from receipt of a corresponding written request.
- 10.2 If the Customer does not notify this in good time, any rights arising from § 281, 323 BGB shall be forfeited.

**XI. Order documentation – Secrecy**

- 11.1 We shall retain the title and copyrights to the offer and all the documents that we have made available to the Customer. They shall be used solely for performing the contract concluded with the Customer. After completion of the contract they will be returned to us freely.
- 11.2 The Customer shall be obliged to keep the offer and other data secret. The obligation to maintain secrecy shall also apply after completion of this contract. It shall not apply to any knowledge in the public domain, knowledge of which is not based upon a breach of contractual obligation by the Supplier.

**XII. Severability Clause (partial invalidity)**

Should any individual terms from the above Terms be wholly or partly ineffective, the validity of the remaining provisions shall not be affected thereby. In such a case the invalid provision is to be converted or supplemented if possible so that the commercial purpose intended by the invalid provision is achieved or most closely approximated.

**XIII. Place of performance and place of jurisdiction**

- 13.1 The place of performance and jurisdiction shall be Landau (Germany).
- 13.2 This contract is subject to the law of Germany only. The provisions laid down in UN law shall not apply.

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