

## 1. Scope

1.1 The present Terms and Conditions of Delivery are applicable only vis-à-vis businessmen as provided for by § 14 of the Civil Code (BGB) if the contract belongs to the operation of the enterprise, as well as vis-à-vis legal persons under public law and special public funds within the meaning of § 310 para. 1 BGB.

1.2 All our deliveries and services are exclusively furnished in accordance with these General Terms and Conditions of Delivery. Any conditions of the customer contrary to these or deviating therefrom, especially conditions of purchase and quality assurance agreements, shall not be recognized unless we have explicitly agreed in writing to their validity.

## 2. Offers and Conclusion of Contract

2.1 Our offers are without engagement and are not binding unless explicitly specified as a binding offer.

2.2 Our written acknowledgement of the order is decisive for the order. An order may also be confirmed by including an invoice with the shipment of the goods. In the event that the customer objects to the contents of the acknowledgement of the order, he shall immediately raise objections. Otherwise the contract will be concluded in accordance with the acknowledgement of the order.

## 3. Subject Matter of the Contract

3.1 Any information contained in papers and not included in the offer and confirmation of the offer, such as drawings, weight and measurements, are not binding unless they are explicitly confirmed as binding.

3.2 We are authorized to perform increased or short deliveries, deviating up to 3 percent from the quantity ordered and for special (customer specific) parts up to 10 percent unless this causes an undue burden for the customer.

3.3 We do not assume any warranty without an explicit agreement. We neither assume a procurement risk for an obligation in kind, without an explicit agreement to do so.

## 4. Prices

4.1 The prices listed in the order confirmation are the actual prices. The prices apply ex works and do not include packaging, insurance, transportation, customs, and value added tax.

4.2 If cost increases unforeseeable for us should occur after expiration of two months between the signing of the contract and the execution of the order, e.g. increase in costs of wages or material, we are entitled to a price adjustment within the scope of the change of circumstances and without calculating any additional profit. We will provide evidence to the customer on request.

## 5. Delivery, Transfer of Risks, Default

5.1 The risk of accidental loss and accidental deterioration of the goods is transferred to the customer at the occasion of the delivery, in the event of shipment at the occasion of the handing over of the goods to the forwarding agent, carrier, or the person designated for executing of shipment. This does also apply if freight prepaid has been agreed to by us in an individual case.

5.2 If the type, route or person designated to perform shipment is selected by us we shall only be liable if we are grossly at fault in the respective selection.

5.3 Periods of delivery are only approximately stated by us. Fixed dates of delivery shall be specially agreed upon. With regard to deadlines and delivery dates not expressly referred to as "fixed" in the confirmation of the order, the customer may set us a reasonable additional period of time for delivery and/or performance after the regular period has been exceeded. We may be deemed to be in delay only after the expiration of such additional period. Delivery periods begin with the date of the confirmation of the order, however not before all documents, materials and information as well as all necessary approvals or permits to be submitted by the customer and necessary for executing the contract have been duly handed over with the required contents and/or in the manner agreed upon.

5.4 Correct and due self-supply remain reserved. Influences of force majeure and other unforeseeable, extraordinary events for which we are not responsible such as interruptions of operations, strikes, lockouts, interventions by public authorities, difficulties with the supply of energy etc. entitle us to delay our performance for the duration of the impediment and a reasonable period of time for operations to get started again. The same shall apply if our sub suppliers are affected by such circumstances. In important cases we will inform the customer of the beginning and ending of such circumstances as soon as possible. If, due to the aforementioned circumstances, the delivery or service to be provided becomes impossible or we can no longer reasonably be expected to perform, we shall be released from our duty to deliver. In the event that the delivery period is extended or that we are released from our duty to deliver, the customer cannot derive any claims for damages from such extension or release. As far as we are released from our duty to deliver any advances of the customer will be given back.

5.5 A period of delivery is complied with if at its expiration the delivery item has left the plant or been declared ready for shipment. This does not apply if in the agreement an acceptance is provided or an obligation for an installation is agreed.

5.6 We are authorized to perform delivery by installments to a reasonable extent.

5.7 If we should be in default of delivery we shall only be liable if the damage caused to the customer by the delay was caused by gross fault on our part. In the event of minor negligence our liability for damage by delay shall be restricted to a compensation of 0,5 percent for each full week of delay, however, not to exceed 5 percent of the price of that part of deliveries which could not be suitably used because of the delay. This does not apply as far as the delay in delivery depends on a violation of an essential contractual duty as well as to the extent that we are compulsorily liable in cases of wilful misconduct or gross negligence and/or for a violation of life, body or health; this does not lead to a change in the burden of proof to the customer's disadvantage.

5.8 The customer's statutory right to rescind the contract shall remain unaffected but requires that we are responsible for the delay. At our request the customer is obligated to declare within a reasonable period of time whether he will rescind the contract after the expiration of this period of time due to the delay with delivery and/or claim damages in lieu of the performance of the contract and/or reimbursement of expenses or whether he will insist on delivery.

5.9 If delivery is delayed for reasons within the responsibility of the customer, the risk shall pass to customer on the day we are ready for dispatch and he shall have to pay the costs of storage, insurance and additional protective measures. For storage in our plant the customer shall pay at least 0,5 percent, however, not to exceed 5 percent, of the amount invoiced for each full week of delay. However, if a reasonable additional period of time set by us is expired and after announcement we are entitled to dispose of the item of sale and to deliver the customer within an adequately extended period.

## 6. Call Orders

Unless something different has been agreed upon, call orders shall be called at the latest at such a date that delivery can be made within a period of six months after order acknowledgement. Calls shall be announced with a notice period of at least two weeks. After expiration of a reasonable period of extension for call or acceptance we have the option between delivery and invoicing of the goods and withdrawal from the contract and claiming of damages.

## 7. Payment

7.1 Bills of exchange and checks are only accepted as payment if this has been explicitly agreed upon, in no case in lieu of payment. Fees and costs caused thereby shall be paid by the customer.

7.2 Unless provided otherwise in the confirmation of the order, the purchase price shall be due immediately without any discount. Deduction of cash discount requires a separate agreement in writing.

7.3 Unless otherwise agreed, default occurs after 14 days after issuing an invoice. In the event the customer is in default of payment we have the right to claim interest on defaulted payment in the amount of 8 percent over and above the base interest rate. The assertion of further damages shall not be excluded hereby.

7.4 If, after accepting the order, we obtain knowledge of facts that give rise to justified doubts about the customer's ability to pay, we shall be entitled to demand full payment or the provision of according security prior to delivery and/or to rescind the contract after setting a deadline for performance to no avail. Besides delays in payment that have already occurred, negative information provided in accordance with the due care of a prudent businessman by a bank, a credit agency (Auskunftei), a company maintaining business relations with the customer or a similar party shall be considered proof of a significant deterioration in the customer's financial situation. If delivery has already occurred, regardless what conditions of payment have been agreed, the entire purchase price becomes due for payment immediately, as the case may be versus return of acceptance.

## 8. Offsetting and Retaining

The customer is only entitled to offset counter-claims which are uncontested or have been legally established. The customer is only entitled to claim a right of retention if it is based on the same contractual relationship. The customer has no right of retention due to partial performances according to § 320 para. 2 BGB.

## 9. Defects as to Quality and Title

9.1 Our liability for defects requires that:

a) none of the following circumstances exists: inappropriate or improper use, faulty installation and/or faulty initial operation, incorrect or negligent handling, use of inappropriate operating materials or substitute materials by the customer or a third party, natural wear and tear, deficient construction works, chemical, electro-chemical or electrical influences, to the extent that such circumstances are not due to our fault;

b) the customer has duly complied with his duties to examine and object under § 377 HGB (German Commercial Code). Complaints in respect of defects must be made in writing within 10 days after receipt or, if not visible in spite of a duly examination, within 10 days as of the customer becoming aware of the respective defect;

c) the customer is not in delay with payment, taking into account a reasonable amount retained for warranty reasons according to no. 9.6 below.

9.2 In the event that our performance has a defect as to quality or title (hereinafter: "defect"), provided that the cause of such defect existed already at the point in time of the passing of risk, we shall have the right of subsequent performance by choosing between repairing the defect or supplying an article free of defects. The expenses necessary for this purpose, such as wage, material, transportation and travel costs, will be borne by us only to the extent that such expenses are not increased due to the fact that, after delivery, a delivered good has been brought to a place other than the seat of the customer, unless such relocation corresponds to the proper use of the respective good. Replaced parts shall become our property and must be returned to us. If we refuse subsequent performance, if subsequent performance failed or the customer cannot reasonably be expected to accept it, then the customer has – without prejudice to possible claims for damages and for reimbursement of expenses according to no. 10 below – the option to withdraw from the contract or request a price reduction.

9.3 In coordination with us, the customer has to grant us the necessary time and opportunity for all reparation and replacements, which are necessary in our equitable discretion. Otherwise, we shall be released from the consequences of loss, which occur due to the fact that the customer did not grant us the necessary time and opportunity to carry out the necessary removal of defects or replacements. The customer has the right to remove the defect by himself or through a third party and to demand the compensation of the costs incurred only in urgent cases of endangerment of the general plant safety and the defence of out of scale damages – whereas we have to be informed immediately – or in case that we are in delay of removing the defect.

9.4 The customer's claims for defects are limited to 12 months from the date of delivery and/or rendering of the service to the extent that we are not compulsorily liable in cases of wilful misconduct or gross negligence and/or for a violation of life, body or health. With regard to replacement parts and/or rectifications of defects, we are liable until the expiration of the warranty period that is applicable to the original delivery item.

9.5 Claims for recourse against us by the customer in accordance with § 478 BGB (recourse of the entrepreneur) will only exist if the customer and his purchaser have not struck any agreements beyond the statutory claims for defects. Sentence 2 of no. 7.2 applies accordingly. The customer is obliged to inform us immediately in case of claims (against him) due to defects of a newly produced delivery item. The customer has to oblige his purchasers accordingly, if they are entrepreneurs. We reserve the right to fulfil the claims from the purchaser to the customer by way of own-name transaction (Selbsteintritt). In this case, the fulfilment of the purchaser's claims shall be considered as fulfilment of possible claims of the customer.

9.6 In the event of complaints in respect of defects, the customer may retain payments to an extent reasonably proportional to the defects having occurred only if the claims of the customer have been recognized by declaratory judgment or have been recognized by us. If the complaint in respect of a defect is unjustified, we are entitled to demand from the customer reimbursement of our expenses incurred.

## 10. Claims for Damages and for Reimbursement of Expenses

10.1 We are liable as according to the statutory provisions if the customer asserts claims for damages or for reimbursement of expenses (hereinafter: "claims for damages") in cases of wilful misconduct and gross negligence – including wilful misconduct or gross negligence of our representatives or vicarious agents. We are only liable in cases of minor negligence if it is a culpable violation of essential contractual obligations arising out of the character of the contract or whose violation poses a risk in reaching the purpose of the contract. In case of a liability pursuant to sentence 2, damages are limited to the foreseeable damage typical for the contract. Otherwise claims of the customer for compensation for damages in cases of minor negligence are excluded, regardless of whatever statutory cause.

10.2 The foregoing exclusions and restrictions of liability do not apply to claims under the law of product liability, in the event of injury to life and limb or health.

10.3 Furthermore, for claims for quality defects the limitation of liability shall not apply if we have intentionally concealed a defect or assumed a warranty for the quality of the goods. The provisions of 9.4 shall be applied correspondingly to the limitation of claims for damages for quality defects.

10.4 The customer's claims for reimbursement of expenses shall be limited to the amount of the interest the customer has in the performance of the contract.

10.5 To the extent that our liability is excluded or limited, this shall likewise apply with regard to the personal liability of our employees, workers, representatives and vicarious agents.

## 11. Retention of Ownership

11.1 We retain ownership of all goods supplied by us until full payment of all accounts payable arising from our entire business relationship. These accounts payable also include claims for checks and bills of exchange and for current accounts. If in connection with payment a liability arising out of a bill should be established for us, retention of ownership will continue until our liability arising from the bill has been excluded.

11.2 In the event of a conduct of the customer that is contrary to the terms of the contract, especially in the event of a delay in payment, we shall be entitled to rescind the contract and to take back the delivered goods. The customer is obliged to grant access to the delivered goods to us or to an authorized agent and to give them back immediately. After taking back the delivered goods, we shall be entitled to utilize the same. The proceeds from utilization, less reasonable utilization costs, are to be counted towards the customer's liabilities.

11.3 The customer shall be obligated to handle the delivered goods with care and, on our demand and while the retention of title lasts, to insure them against damages sufficiently. The customer herewith assigns his claims against the insurer to us.

11.4 In the event of seizures or other interventions by third parties, the customer must notify us without delay in writing so that we may take action according to § 771 ZPO (German Code of Civil Procedure). To the extent to which the third party shall not be able to reimburse judicial and extra-judicial costs of an action according to § 771 ZPO, the customer shall be liable for our loss.

11.5 The customer is entitled to make use of the sold product within the ordinary course of business. In the event of a resale the customer at that time already shall assign to us all claims arising from the resale, especially claims for payment as well as all other claims arising in connection with the resale, in the amount of our final invoice (including VAT). This shall apply regardless of the fact whether the sold product has been resold without or after further processing. The customer has the authority to collect the assigned accounts receivable for us as a trustee; our right to collect such claims remains unaffected. However, we shall be obliged not to collect claims while the customer meets his financial obligations from proceeds received, while he is not in default with payments and in particular did not file for insolvency or stop payments. If this obligation not to collect claims does not apply, we are permitted to request the customer to inform us of the assigned accounts receivable and their respective debtors, to furnish all details necessary for collections, to submit the relevant documents, and to notify the debtor of the assignment.

11.6 Handling and processing of the object of sale by the customer is always on our behalf. In accordance with § 950 BGB we are deemed to be the manufacturer without any further obligations. In the event that the object of sale will be processed together with other items not belonging to us, we shall acquire joint ownership to the new object in the proportion of the value of the article delivered to the value of the other goods which have been processed at the time of processing. The same provisions as those applicable to goods delivered with retention of ownership shall apply to articles produced in processing.

11.7 If the object of sale is mixed or connected with articles not belonging to us we acquire joint property to the new articles in the proportion of the amount invoiced of the sold object to the other mixed and/or connected items at the date of mixing or connection. If by mixing or

connecting the customer's product becomes the principal component, it is assumed that proportionate assignment of joint ownership has been agreed with the customer. The customer keeps custody of the sole property or joint property.

11.8 We undertake at our option to release the securities to which we are entitled upon request of the customer to the extent that their realizable value exceeds by over 20 percent the claims to be secured thereby.

## 12. Proprietary Rights of Third Parties

The customer shall be responsible that by complying with his instructions relating to forms, measurements, colours, weights, etc. no proprietary rights of third parties will be violated. The customer shall release us and hold harmless against all claims of third parties for violation of the above listed proprietary rights including all legal and extra-legal costs and, upon request, assist us in a possible lawsuit.

## 13. Place of Performance, Jurisdiction, Applicable Law

13.1 For both parties Ispringen is the exclusive place of performance for delivery and payment.

13.2 For full merchants and both parties the courts at our principal seat of business have jurisdiction over all legal disputes arising out of this contractual relationship, its origins and effectiveness. We have the option of commencing proceedings at the business seat of the customer or at another statutory place of jurisdiction.

13.3 The contract shall be subject to the laws of the Federal Republic of Germany, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods and other international agreements.

13.4 If any particular provision of these Terms and Conditions is or becomes all or part invalid, such invalidity shall not affect the validity of the other provisions hereof. The German version of these Terms and Conditions shall be authoritative; any translations into other languages are non-binding.

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