

General terms and conditions



1. Validity

- 1.1 The following terms and conditions shall exclusively apply to all supplies and services performed by us. They shall especially apply to the delivery and sale of machines and systems inclusive of their spare parts and accessories, their maintenance and repairs as well as to consulting services (in the following generally called "performances").
- 1.2 These terms and conditions shall also apply to any subsequent business with the purchaser, even if not expressly included once again.
- 1.3 Dissenting general terms and conditions of the purchaser shall not find any application, even if we do not expressly contradict them once again.

2. Offer and sales contract

- 2.1 Our offers are subject to confirmation.
- 2.2 Orders cannot be considered as accepted before we have not confirmed them in writing. The purchaser shall be bound to his order until we have declared our confirmation, however, he shall not be bound longer than two weeks at the latest.
- 2.3 The scope of delivery shall be defined by our written order confirmation. Any subsidiary agreement or modification are subject to our written confirmation to become effective. All documents joined to the offer, such as illustrations, drawings, indications of weight and dimensions, shall not have decisive character, unless our order confirmation expressly mentions their binding force. We reserve the right to make technical modifications as to design and form of our products.
- 2.4 We reserve all rights of exploitation such as copyright and property right without restriction for all drawings and other documents surrendered to the purchaser; they must not be made accessible to a third party without our previous written approval. Drawings and other documents relating to our offers shall be returned immediately upon demand, in case that the order is not placed with us, or their destruction shall be proved. The same shall apply to any kind of copies.
- 2.5 Without our previous written approval, rights of the purchaser which might result from the contract shall not be transferred to any third party, even if this party should be the legal successor of the purchaser.

3. Prices

- 3.1 The prices are to be understood plus turnover tax which shall be added in the amount valid for the time being. For any delivery, the prices are to be understood ex works, inclusive of loading at the factory, but exclusive of packing, installation and adaptation or adjustment work in the plant of the purchaser as well as exclusive of customs clearance charges, duties, additional taxes and any other incidental expenses. Unless otherwise mutually agreed upon, costs for transportation, installation and assembly shall be charged in accordance with our prices valid at the moment of performance.
- 3.2 Unless otherwise agreed upon, packing shall be charged in the amount of the cost price. Packing material shall not be taken back, unless legal regulations should put us under the obligation of taking it back.
- 3.3 Unless fixed prices are expressly mentioned in our order confirmation, we shall be authorised to make a fair and reasonable price increase in the case of modifications which might occur after conclusion of the contract, such as material costs, pays and salaries, freight charges, public fees or duties and any other circumstances defying our influence. As far as the contract is not a matter of continuous obligation, the aforesaid shall only apply in the case of an agreement stipulating that the performance (also partial performance) shall be effected more than four months after conclusion of the contract; or else the performance has actually been furnished more than four months after conclusion of the contract for reasons for which we are not responsible. In case that our price increase should exceed the originally agreed price by more than 5 %, the purchaser shall be entitled to cancel the contract. The purchaser shall not be entitled to put a claim for damages in this case.

4. Payment

- 4.1 All payments are due immediately after receipt of the invoice and shall be paid without any discount, especially cash discount.
- 4.2 In case that performances are effected to purchasers who have their seat in another state of the EU, the purchaser shall inform us immediately about his turnover ID number in order to enable us to perform our supplies zero-rated. Taxation shall be made by the purchaser in the country of destination (destination principle).
- 4.3 In case that sustained doubts should arise as to the paying ability or willingness of the purchaser, especially for nonfulfilment of commitments resulting from this or from another contract concluded with us, or for later deterioration of his economic situation leading to an evident risk for our payment claims, we shall be entitled, even in the case of a respite granted after conclusion of the contract, to make our claims against him immediately due and payable, to ask advance payments or collateral security, or, if the purchaser refuses, to cancel the contract; the aforesaid applies as far as the conditions of a default in payment are given. We reserve the right to claim damages from the purchaser.
- 4.4 Retaining of payments and/or counterbalancing for possible purchaser's counterclaims contested by us and not defined by a final judgement, shall not be allowed, unless a severe violation of duties could be charged to us or the claims counterbalanced were based on the fact that our delivery shows deficiencies in quality and title.

5. Time of performance

- 5.1 Dates for supplies and other performances shall not be binding before our express written approval. The delay of performance shall commence at the date of dispatch of the order confirmation, however not before presentation of all documents, materials, authorisations and releases to be procured by the purchaser nor before receipt of an advance payment agreed upon.
- 5.2 The contracting parties shall dress a time schedule for all extensive projects. Deviations from this time schedule shall be notified immediately to the other party. The contracting parties shall approve such time delays, unless imperative needs are opposed to such proceeding.
- 5.3 The time of performance shall be kept, when the delivery item has left the factory before expiration of this delay and/or when notification has been given to the purchaser that the performance has been completed, or, for supplies, that the delivery item is ready for dispatch.
- 5.4 The period of delivery shall be extended in a fair and reasonable degree in the case of actions taken during industrial conflicts, especially strikes and lockouts as well as in the case of unexpected events for which we are not responsible. The same shall apply if this kind of situation occurs at a subcontractor's site.
- 5.5 The purchaser shall not be entitled to advance claims for exceeding of the delivery periods, unless he has fulfilled all contractual and co-operation duties for his part, especially due payments.

6. Passage of risk and dispatch

- 6.1 At dispatch of the delivery items at the latest, the risk shall pass to the purchaser; this shall also apply to partial shipments and to the case of other performances assumed by us, such as supply costs, transportation or installation.
- 6.2 In case that dispatch should be delayed for circumstances for which the purchaser is responsible, the risk shall pass to the purchaser at the day of notification that the items are ready for dispatch.
- 6.3 After passage of risk, we only shall insure the delivery item upon express and clear demand of the purchaser, on his own account and on his instructions. Unless otherwise agreed upon, the insurance costs shall amount to 1 % of the net value of merchandise.

7. Reservation of ownership

- 7.1 We reserve the right of ownership of the delivery item until receipt of all payments resulting from the respective supply contract. If the purchaser is a trader, the reservation of property shall apply to all outstanding debts resulting from the present, from former and from all future supply contracts. In case of contract violation by the purchaser, especially delay in payment, we shall be entitled to withdraw the delivery item after admonition and extension of the original term, and the purchaser shall be obliged to hand over the merchandise. Withdrawal as well as seizure of the conditional merchandise, if done by us, shall not cancel the contract, unless we expressly declare so in writing. The purchaser shall notify us immediately in writing of any seizure or any other intervention of a third party and shall give us all information in order to enable us to preserve our rights.
- 7.2 If the performance item is a merchandise of high value, especially valuable machines, the purchaser shall effect insurance against theft, fracture, fire, water and other approximate damages for the period of reservation of ownership and shall give report of the risks covered. In case that the purchaser fails to do so, we shall be entitled to effect these insurances on his account.
- 7.3 The reservation of ownership as well as collateral security for any payment duly made in order to fulfil the contract shall remain valid in our favour until complete indemnification from any contingent liability engaged in the purchaser's interest (e.g. in the case of payment by the so-called check-bill of exchange-procedure).

8. Acceptance

- 8.1 In case that the performance which is subject to the contract also includes installation or assembly of a machine or a plant, acceptance in form of a trial run shall be made at the purchaser's site in attendance of both contracting parties after completion of installation. Any material, staff, current, etc., necessary for this shall be made available free of charge by the purchaser. The result of these trial runs shall be kept in a record signed by both parties. Signature of this record shall effect purchaser's acceptance of the performance which was subject to contract.
- 8.2 Acceptance by the purchaser must be made within 30 days at the latest after our completion notice notified to the purchaser. If acceptance is not made within this time by reasons for which we are not responsible, we can grant a new fair and reasonable delay to the purchaser for acceptance. The performance shall count for accepted, unless the purchaser refuses the acceptance in writing before expiry of this delay by exposition of all reasons opposed to such acceptance.
- 8.3 Any defect mentioned in the record of acceptance shall be eliminated by us within a suitable delay.

9. Redhibitory defects

- 9.1 Immediately after receipt of the supply, the purchaser shall check, if the merchandise presents any defect, if another merchandise than the one agreed upon has been supplied or if the agreed quantity has been exceeded or is insufficient.
- 9.2 Obvious defects must be notified in writing within 14 days after receipt of the merchandise. The date of dispatch of the purchaser's complaint shall be decisive.
- 9.3 If the purchaser's complaint is justified and made within the delay, we shall be entitled to chose between elimination of the defect or supply of a merchandise without defect within a reasonable delay (post-fulfilment). If this post-fulfilment fails, if we refuse or if it is unacceptable for us, the purchaser can withdraw from the contract or reduce the price. The purchaser cannot claim for damages, unless the origin of the damage is due to intention or to gross negligence for which we are responsible or the origin of the damage is due to any circumstance mentioned before. In such cases, our liability shall be limited to the typical contractual damage, i.e. the damage which was objectively expectable.
- 9.4 Any requirement resulting from redhibitory defects shall fall under statute of limitations after 12 months, unless the performance was consisting in the supply of planning or controlling services for a building or in the supply of a merchandise which was, according to its standard application, used for a building and, thus, at the origin of the defects of the latter.

10. Liability in case of violation of duties

- 10.1 In case that we cause violation of liabilities resulting from our obligatory relation, the purchaser shall be entitled to claim for damages in accordance with the legal regulations.
- 10.2 In case that the purchaser's claim for damages results from a tort committed by us or by our vicarious agents, the purchaser shall not be entitled to claim for substitution of economic losses, unless the violation of liability was caused by intention or gross negligence. In such cases, the amount of compensation shall be limited to the typical contractual expectable damage.
- 10.3 In case of damages which are not caused by violation of liabilities resulting from our obligatory relation, the purchaser shall not be entitled to claim for damages against us or our vicarious agents, unless the damage was caused by intention or gross negligence for which we were responsible. This restriction shall not apply to liability for damages resulting from injuries of life, body or health.
- 10.4 We shall not be liable for damages resulting from conditions which shall be prepared by the purchaser and which are insufficient for performance of the contract. This shall especially apply to any requirement to be made for statics of buildings or parts of buildings where our performances have to be introduced, unless checking of these conditions is expressly included in the scope of contract.

11. Place of fulfilment and jurisdiction for traders, law to apply

- 11.1 Exclusive place of fulfilment and jurisdiction shall be Villingen-Schwenningen, as far as the purchaser is a trader, a public law body or a public special fund. The same clause shall apply if the purchaser transfers his legal domicile or his habitual residence abroad after conclusion of the contract or if his legal domicile or his habitual residence are not known at the moment of bringing action.
- 11.2 Unless otherwise agreed upon, German law shall apply to any dispute resulting from these general terms and conditions or from contracts concluded on the basis of these terms and conditions; application of the UN sales law (CISG) as well as the international civil and procedural law shall be expressly excluded.
- 11.3 For any translation of these general terms and conditions, the German text, on the basis of German law, shall have decisive character in all discrepancies arising in interpretation of the terms and expressions used for translation.