

General Terms and Conditions

Version 1.1

07.07.2020

## **Terms of Delivery and Payment Version**

### **1. General provisions**

- 1.1 Our deliveries are always carried out on the basis of the following conditions. Any deviations from these conditions shall only be deemed valid if explicitly agreed in writing.
- 1.2 Deviating, contradictory or supplementary Terms of Purchase from the Buyer shall not constitute part of this agreement, even with our acknowledgement, provided the validity thereof is not explicitly agreed in writing.
- 1.3 The placement of an order is regarded as unconditional acceptance of our Terms of Delivery and Payment.
- 1.4 The Buyer is not permitted to assign any claims without our consent.
- 1.5 In the event that individual provisions of these Terms of Delivery and Payment are deemed invalid, in part or in full, this shall not affect the validity of the remaining provisions. The wholly or partially invalid provision must be replaced by a provision that comes closest to the economic purpose of the original provision.
- 1.6 This contractual relationship is exclusively governed by the law of the Federal Republic of Germany. The terms of the UN Convention on Contracts for the International Sale of Goods shall not apply.

### **2. Quotes and order acceptance**

- 2.1 With the exception of binding quotes that are defined as such, our quotes are non-binding and subject to change.
- 2.2 The details and descriptions featured in our catalogues and brochures only serve to provide a rough approximation. They remain subject to change. Dimensions, weights, illustrations and drawings shall only be binding for the design if explicitly confirmed in writing. Performance specifications are only able to provide approximations. We shall not be liable for any clear mistakes, or computational, spelling or calculation errors.
- 2.3 By placing an order, the Buyer bindingly declares his intention to place an order.

- 2.4 Orders and other arrangements, including those mediated by our domestic and foreign representatives, shall first be deemed accepted if you receive written confirmation from us within 4 weeks after the date on which you placed the order. Similarly, additions, amendments or verbal ancillary agreements require our written confirmation within 4 weeks after the date on which they are submitted to us to be effective.
- 2.5 We reserve all ownership rights and copyrights for price quotations, sketches, drawings and other documents. This also applies in the case of written documents that are marked as “confidential”. Unless we have provided express written consent to the contrary, the aforementioned documents must be safeguarded from third-party access and not used for any other purposes, in particular for self-production.
- 2.6 The Buyer hereby assumes full liability for the binding nature of the documents to be supplied, such as drawings, templates, samples and similar. Any verbal specifications regarding dimensions, tolerances or similar attributes must be confirmed in writing.
- 2.7 Samples shall only be delivered at extra cost.

### **3. Scope of delivery**

- 3.1 The scope of delivery is defined in our written order confirmation.
- 3.2 Safety devices shall be supplied, provided this has been contractually agreed.
- 3.3 The regulations of the German Institute of Electrical Engineers (VDE) shall apply to all electrical accessories (engines, etc.), insofar as they relate to design and performance.

### **4. Prices**

- 4.1 Provided nothing has been agreed to the contrary in the order confirmation, our prices are listed in EUR ex-works from our production facilities in Regenstauf, excl. packaging, which shall be listed separately in the invoice.
- 4.2 Our prices do not include statutory VAT; this shall be listed separately in the invoice in the amount applicable on the day the invoice is created.
- 4.3 Prices or surcharges for carriage-paid, FOB, C&F, CIF, etc. deliveries are non-binding and subject to change in line with any amendments to the applicable tariffs.
- 4.4 The prices valid on the delivery date shall apply.

4.5 If unforeseen amendments are required due to new information to fulfil the function, we reserve the right to adjust the price accordingly. We shall inform the Buyer of any amendments upon request.

4.6 Furthermore, we likewise reserve the right to adjust our prices accordingly in the case of cost reductions or increases attributable to collective agreements or changes in the price of materials after the placement of the order. We shall inform the Buyer of any amendments upon request.

## **5. Payment terms**

5.1 Provided nothing has been agreed to the contrary in the order confirmation, the following payment terms shall apply.

5.2 Our invoices are payable within 30 days after the invoice date.

Statutory provisions regarding the consequences of late payment shall apply if the Buyer defaults in payment. We shall grant a 2% discount for all payments made within 8 days after the invoice date.

5.3 Contrary to Section 5.2, in the case of custom-made products, products that deviate from the design specifications in the catalogue, or orders for standard products with a value that exceeds 10,000 EUR, the following payment terms shall apply:

1/3 of the total price incl. VAT upon order confirmation

1/3 of the total price incl. VAT upon invoicing and notification that the goods are ready for shipment

1/3 of the total price incl. VAT 30 days after the invoice date.

5.5 Payment must be made without any deductions in cash or free of charges to our paying agents.

5.6 Cheques and bills of exchange are only accepted on account of payment; only after previous mutual agreement in the case of bills of exchange. The Buyer shall bear the costs for discounting and collection.

5.7 The Buyer is only entitled to the right to offset payment in the case of counterclaims that are legally binding, undisputed or recognised by us. Furthermore, the Buyer is entitled to the right to withhold payment, provided the counterclaim corresponds to the same contractual relationship.

If we become aware that the Buyer is in an unfavourable financial or asset situation after the conclusion of the contract, we reserve the right to demand instant payment or sufficient security, to withdraw from the contract without the requirement to pay compensation, to charge for any costs incurred prior to that point in time, and to postpone any pending orders.

5.8 In the case of cessation or insolvency of the Buyer, our claims for payment shall be due immediately. All discounts, bonuses, etc. granted shall also lapse in the above case, meaning the Buyer is consequently liable to pay the gross invoiced price.

## **6. Delivery period**

6.1 The delivery period first commences once all of the prerequisites for the performance of the order have been fulfilled, in particular the clarification of all details for the performance of the order (incl. the submission of requested plans or samples for the equipment of the ordered machines and devices) and both contractual parties have agreed to all of the order conditions. The delivery period refers to the completion of production.

6.2 Adherence to our delivery obligations is also contingent on the timely and proper fulfilment of the Buyer's contractual obligations, notably the agreed payment terms. The right to raise objection to the non-performance of this contract remains reserved.

6.3 If the Buyer is in default of acceptance or culpably breaches other obligations to cooperate, we are entitled to demand compensation for the damaged incurred by us in this regard, including any additional expenses. Notably, we reserve the right to calculate the costs for storage at our production facilities with a minimum of 0.5% of the invoiced amount for each month that passes, commencing in the month in which the notification that the goods are ready for shipment was sent.

6.4 If a grace period of one month after the notification that the goods are ready for shipment was sent expires without any success, we shall be entitled to otherwise dispose of the goods and deliver to the Buyer within a reasonably extended period.

6.5 The risk of accidental loss or deterioration of the goods shall pass to the Buyer at the moment the Buyer is in default of acceptance or payment.

6.6 The delivery period shall be accordingly amended in the case of unforeseen events, e.g. interruptions to operations, strikes, lockouts, or a part is rejected that cannot be replaced immediately, etc., that take place at our production facilities or the subcontractor's premises, or delays due to the same grounds, or required amendments in line with updated information, even if they occur during a default in delivery. The same applies if official or other third-party approvals or documents required for the performance of deliveries are not received in time, and in the case of any subsequent amendments to the order.

6.7 If we are otherwise in default of delivery, in the case of losses, the Buyer is entitled to claim compensation amounting to no more than 0.5% of the price of the late delivery for each full week of delay, limited to 5% of the value of the late delivery in total. All other claims for compensation are hereby excluded. The Buyer is required to obtain advance approval from the Supplier to claim a penalty.

6.8 Partial deliveries are permissible, subject to the payment terms as per Section 5.

## **7. Transfer of risk**

7.1 The risk shall pass to the Buyer once the goods are dispatched from our production facilities.

7.2 If shipment is delayed due to reasons for which we are not responsible, the risk shall transfer to the Buyer on the date on which the goods were declared ready for shipment.

7.3 If the Buyer so requests, we shall ensure the goods are covered by transport insurance; the Buyer must bear the costs in this regard.

## **8. Packaging and shipment**

8.1 The goods shall be packaged at our discretion in a commercially customary manner.

8.2 The packaging shall be charged at cost price. The Buyer is responsible for disposing of the packaging and bearing the costs thereof.

8.3 If the Buyer has not provided any specific instructions to the contrary, the selection of the transport route shall be made at our discretion without any liability for using a cheaper shipping method or shorter route.

8.4 If the delivery of goods ready for shipment does not take place on the scheduled date due to reasons for which we are not responsible, the costs for the subsequent storage of the goods at our facilities or third-party facilities shall be borne by the Buyer.

## **9. Commissioning**

9.1 The Buyer must bear all costs incurred during commissioning for the mechanic and allowance rates, in particular for overtime and work on Sundays and public holidays as per German statutory provisions. Travel and working hours are considered working hours in this regard.

9.2 The Buyer must cover costs of the outward and return trips, and for the transportation of tools and luggage.

**10. Liability for defects**

With the exclusion of further claims, we shall be liable for the following defects in delivery:

10.1 We must be immediately informed of any defects in writing. If the Buyer fails to notify us in a timely manner, the delivery shall be deemed accepted according to the contract.

10.2 In the case of a defect that renders the product demonstrably unusable or significantly restricted in its usability that can be attributed to an event that occurred prior to the transfer of risk – in particular due to faulty design, substandard building materials or poor workmanship – we are at liberty to decide whether to repair or replace the faulty product. In the case we elect to replace the faulty product, the received goods shall become our property.

10.3 If we seriously and definitively refuse to repair or replace the faulty goods due to disproportionately higher costs, or fail in our efforts of subsequent performance, or the Buyer is unreasonable, the Buyer is at liberty to demand a reduction in the price, to withdraw from the contract or seek compensation for damages within the framework of the limitation of liability as per Sections 10.10 and 10.11 in place of demanding repair or replacement. However, in the event of an insignificant contractual violation, particularly for insignificant defects, the Buyer shall not be entitled to withdraw from the contract.

10.4 Insofar as the Buyer's complaint is justified, we shall bear the costs of the replacement part ex-works arising from the direct costs incurred by the repair or replacement. The Buyer shall bear all other costs, including travel and assembly costs.

If the defect occurs at a location situated more than 100 km away from our production facilities in Regenstauf, the Buyer is obligated to return the faulty goods to our Regenstauf production facilities at our expense, if we so request. We shall pay the required shipment costs.

10.5 We shall not assume any liability for delivered parts that are subject to premature wear and tear as the result of their material composition or the way in which they are used.

We shall likewise not assume any liability for damages resulting from inappropriate or improper use, faulty assembly or commissioning by the Buyer or a third party, natural wear and tear, incorrect or negligent handling, excessive loads, inappropriate working materials, the entry of foreign bodies, defective work undertaken on the goods by a third party or outside influences.

- 10.6 We shall only be liable for third-party products to the same extent with regards to time and materials warranted by our subcontractor to us.
- 10.7 The Buyer must grant us the time and opportunity required to carry out repairs or replace the goods. Failure to do so shall release us from our liability for defects. The Buyer must provide assistants in this regard.
- 10.8 We shall not be obliged to remedy defects if the Buyer has failed to meet his contractual obligations thus far – payment obligations in particular.
- 10.9 We shall no longer be liable for defects if the Buyer or third parties commissioned by him undertake modifications or repair work on the goods – also for commissioning – without first obtaining our written approval.
- 10.10 If the Buyer asserts claims for damages based on intent or gross negligence, we shall be liable as per the statutory provisions. This shall also apply in the case of intent or gross negligence of our representatives or vicarious agents. Provided we are not accused of intentionally breaching the contract, our liability for damages is limited to foreseeable, typically occurring damage.
- 10.11 If we culpably violate an essential contractual obligation, we shall be liable in accordance with the statutory provisions. However, in this case, our liability for damages shall be limited to foreseeable, typically occurring damage.
- 10.12 Liability for culpable injury to life, body or health remains unaffected by the above provisions; this also applies to mandatory liability as per the German Product Liability Act.
- 10.13 The Buyer does not receive any legal guarantees in this regard.
- 10.14 Claims for defects shall become statute-barred 12 months after the transfer of risk.

## **11. Joint and several liability**

- 11.1 Any further liability for damages beyond the stipulations of Section 10 is hereby excluded, irrespective of the legal nature of the asserted claim. Notably, this shall apply in the case of claims for damages arising from fault in conclusion of a contract, other breaches of duty or tortious claims for compensation for material damage in accordance with Section 823 of the German Civil Code (BGB).
- 11.2 If liability for damages against us is excluded or restricted, this shall also apply to the personal liability of our employees, workers, staff, representatives and vicarious agents for damages.

**12. Retention of title**

- 12.1 We shall retain ownership of the delivered goods until the moment of complete repayment of all claims that have arisen and continue to arise from the business relationship or other legal grounds between us and the Buyer.
- 12.2 If the validity of this retention of title is subject to special conditions or formal requirements in the country of the Buyer's domicile, the Buyer is obligated to ensure these are fulfilled at his own expense.
- 12.3 The Buyer is only entitled to dispose of the delivered goods in the ordinary course of business; other dispositions, such as pledging or transferring ownership, are not permitted.
- 12.4 The delivered goods shall be processed on our behalf without leading to any obligations on our part.  
If our goods are processed, combined or mixed with other goods that do not belong to us by the Buyer, we shall be entitled to assume co-ownership of the new item in the ratio of the value of the goods subject to retention of title to the other goods at the time they were processed, combined or mixed. If the Buyer acquires sole ownership of the new item, we hereby agree that he shall grant us co-ownership of the latter in the ratio of the value of the processed, combined or mixed goods subject to retention of title to the value of the new item and store the new item for us free of charge.
- 12.5 The Buyer hereby assigns the receivables from the resale of the goods subject to retention of title to us as of now, regardless of whether the sale takes place without or after processing, combining or mixing. We accept this assignment. If the goods subject to retention of title are sold after processing, combining or mixing with other goods not belonging to us, the assignment of the receivables shall apply up to the value of our goods subject to retention of title. The Buyer is entitled to collect receivables from the resale as long as he continues to fulfil his obligations from the contract. We must be immediately informed of any measures or circumstances that pose a risk to our security rights, including all details.
- 12.6 If the value of the securities held by us exceeds the total value of more than 20%, we are required to release securities at our discretion at the Buyer's request.



12.7 We are entitled to sufficiently insure the delivered goods at reinstatement value against fire, water and theft at the expense of the Buyer, unless the Buyer can prove that he has already acquired the respective insurance policy. If maintenance and inspection work is required, this must be performed by the Buyer without delay and at his own expense. The Buyer must immediately inform us of any third-party access to the goods delivered under retention of title and notify us of the rights assigned to us in this regard. If we demand the return of goods delivered by us under retention of title, this return shall only be regarded as withdrawal from the contract if we expressly notify the Buyer thereof.

**13. Place of jurisdiction and fulfilment**

13.1 The place of jurisdiction is Regensburg. We also reserve the right to file a suit against the Buyer at the court of jurisdiction at his place of business.

13.2 Provided nothing has been agreed to the contrary in the order confirmation, our headquarters located in Regenstauf shall be the place of fulfilment for delivery and payment.

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