



# General Conditions for Delivery and Assembly



## General Conditions for Delivery and Assembly

### **1. Validity and conclusion of contract**

- 1.1 Our General Terms and Conditions of Delivery and Assembly shall apply in the most recent version on the date of the respective conclusion of contract for all of our performance and delivery. In addition our service rates apply in the current version at conclusion of the contract. Additionally the special conditions OEM apply for the manufacture and delivery of products by us on order of the customer with this name, brand or other marking as OEM products.
- 1.2 Our General Terms and Conditions of Delivery and Assembly and our service rates, each in the most recent version on the date of the conclusion of contract, also apply for future business with the customer.
- 1.3 The regulations outlined in Section 1.1. shall apply exclusively. The General Terms of Trade of the Customer will not become part of the agreement even if we do not expressly contradict these
- 1.4 Our offers are non-binding. Only after receipt of the written confirmation of order, the contract is regarded as concluded. The scope of our performance shall be set down exclusively by our written confirmation of order, including the written appendices thereto.
- 1.5 Supplementary agreements and changes shall only come into effect upon our written confirmation. This shall also apply to the waiver of the aforementioned provision.
- 1.6 Our fulfillment of the contract with respect to parts subject to governmental export regulations shall be subject to the condition that the required licenses are issued to us.
- 1.7 The documents and information delivered and made by us such as pictures, drawings, weights and measures are only binding if we have expressly specified them as an element of contract or make specific reference to them.
- 1.8 We reserve all rights of ownership and copyrights to all supplied information and documents (e.g. samples, cost estimates, drawings, documentation) - including in electronic form; they may not be made available to third parties without our express written consent.
- 1.9 Written form may be replaced by fax, but cannot be replaced by the electronic form pursuant to Sec. 126a German Civil Code or the text form pursuant to Sec. 126b German Civil Code.
- 1.10 These General Terms and Conditions for Delivery and Installation do not apply to consumers in accordance with § 13 BGB (German Civil Code).

### **2. Prices and payments**

- 2.1 Our prices shall apply ex Works exclusive of packaging, loading and additional VAT in the statutory amount.
  - 2.1.a In the case of delivery within the European Union, customer must provide us in good time prior to the contractually agreed delivery date with his VAT identification number as proof of his exemption from VAT. In the event that such notification is not given or not given in good time, we reserve the right to charge the appropriate VAT.
  - 2.1.b In the case of delivery outside of the European Union we are entitled to charge VAT in the statutory amount after delivery if customer does not send us a proof of exportation within one month after shipment.
- 2.2 Cost estimates are non-binding.
- 2.3 Unless otherwise agreed, the customer shall effect the payment within 14 days after receipt of the invoice.
- 2.4 Assembly, repairs and other services are invoiced at the respective current rates that are available from us on request.

Work outside the normal working hours is subject to supplementary charges. Travel and waiting times are considered as working time.

- 2.5 Payments are to be made without any deduction to one of our accounts.
- 2.6 The customer may only offset or withhold payment with counterclaims whose legal basis or amount are not disputed or are final and absolute.
- 2.7 Our receivables are due with the receipt of our invoice. The Customer is in arrears 14 days after the receipt of the invoice without any additional reminder. In this case, the Customer is obligated to pay 9 percent default interest above the currently applicable basic interest rate. We expressly reserve the right to assert higher damage.
- 2.8 The prices of an offer shall only apply for orders for the full scope of the offered performance.
- 2.9 The customer is entitled to pay by cheque or bank draft if this has been expressly agreed with us. Bills of exchange and cheques will only be accepted on account of payment. Collection and discount expenses shall be borne by the customer.
- 2.10. In exceptional cases, if we have explicitly declared in writing that we agree to partial payments, the balance payments shall become due if the customer is in default with an installment in full or in part for longer than 14 days. A separate reminder is not required.

### **3. Performance, Transfer of Risk, Acceptance**

- 3.1 We reserve the right to reasonable partial performances.
- 3.2 Deliveries are EXW ex-production site as per Incoterms 2010 unless otherwise agreed.
- 3.3 In case of work performance the risk will be transferred to the customer with the acceptance of such work performance. If the customer takes over the transport of the item from the point of manufacture to the site of its use, the customer shall bear the risk for the duration of the transport.
- 3.4 The provisions for the transfer of risk shall also apply if partial deliveries are made or other services are to be performed by us.
- 3.5 Should a delivery or the acceptance of goods be delayed or not be effected due to circumstances outside the scope of our responsibility, the Customer shall bear all risks of the goods from the day that we notify him that they are at his disposal and ready for transport. We agree to take out the insurance demanded by the Customer at his expense.
- 3.6 Notwithstanding his rights under section 8 hereof, the customer may not refuse the acceptance of the performance in the event of insignificant defects or deviations in volume.
- 3.7 The customer is not entitled to return the goods which have been delivered in accordance with the contract.
- 3.8 If the shipment is delayed at the customer's request or for reasons for which he is responsible, or if we have agreed with the customer that the he has to accept the goods, and if the acceptance is delayed owing to circumstances for which the customer is responsible, we are entitled to charge the customer storage costs for each month amounting to 0.5 % of the relevant order volume, beginning with the month after notification of the readiness for shipment, however not more than 5 %. The proof of higher or lower storage costs remains unaffected. In addition, in the event of default of accepting delivery of goods, the consequential additional expenses will be charged pursuant to § 304 BGB (German Civil Code).
- 3.9 Release orders have to be accepted by the customer within 4 months after expiry of the contractual term. If the customer fails to accept the goods, he shall be in default on expiry of the deadline without further reminder. In this case we are entitled to request compensation for any damages due to the delay in acceptance. After stipulating a

reasonable extension period, we may additionally withdraw from the contract or demand compensation instead of the performance.

#### **4. Retention of title**

- 4.1 Ownership to the subject of delivery shall not pass to the customer until payment has been made in full. If the validity of this retention of title is subject to certain conditions or special formal requirements in the country of destination, the customer shall ensure that they are fulfilled.
- 4.2 The customer may not pledge, sell or assign as security the subject of delivery prior to the passage of title. In the event of pledges and seizures or other orders by third parties, the customer must inform the third party of our title and notify us without undue delay.
- 4.3 In the event of actions on the part of the customer in breach of contract, including, but not limited to, default of payment, we shall be entitled to repossession following a notice of default. In this case the Customer shall be obliged to return the goods. Neither the enforcement of the retention of title nor the pledge of the subject of delivery by us shall be deemed to be a rescission of contract.
- 4.4 An allowed motion for opening the insolvency proceedings on the assets of the Customer shall entitle us to cancel the contract and to demand immediate return of the goods.
- 4.5 If customer is residing in the Federal Republic of Germany, the following shall apply in addition to the foregoing:
- 4.5.a By way of derogation from section 4.1 hereof, we reserve ownership to the subject of delivery until all of our claims against the customer within our ongoing business relationship have been satisfied.
- 4.5.b By way of derogation from section 4.2 hereof, the customer is entitled within the scope of his normal business transactions, to resell the subject of delivery for which we reserve ownership under the following conditions: He must resell the subject of delivery under retention of title if the subject of delivery is not immediately paid in full by the third-party customer. There shall be no entitlement to a resale if the customer is in default of payment. The customer hereby assigns the claims arising under the resale or under any other legal grounds to us to secure our claims. In the event that the reserved goods are processed and co-ownership is created, the assignment shall only encompass the percentage of claims corresponding to our co-ownership.
- 4.5.c The customer shall remain entitled to collect the claims assigned to us after their assignment for as long as he complies with his payment obligations to us in accordance with the terms of this contract. We may demand at any time that the customer discloses the assigned claims and the debtors thereof, provides us with all information necessary for collecting such claims, delivers to us the documents pertaining thereto and informs the debtor of the assignment.
- 4.5.d Processing of the reserved goods by the customer shall always be effected on our behalf. If the reserved goods are blended, bonded or processed with items to which we do not own a title, we shall acquire co-ownership at the ratio of the invoiced value of the reserved goods to the other processed items at the time of processing. If our goods are blended, bonded or processed with other movables to a single item and if the other item is to be viewed as the main item, it shall be deemed that the customer shall transfer proportionate co-ownership to us, provided that he is the owner of the main item. The customer shall act as custodian of the property or joint property for us. In all other respects, the same provisions shall apply for the item created by processing, bonding or blending as for reserved goods.
- 4.5.e We undertake to release the securities to which we are entitled to the extent that the invoice value of all securities which can be realised exceeds not just temporarily the total amount of all our claims by more than 10 %.
- 4.5.f Provided that the subject of our deliveries are firmly connected to the ground or have been integrated into a building, such connection or integration shall only take place for temporary purposes.

#### **5. Term of performance**

- 5.1 Compliance with the agreed performance term requires that all commercial and technical issues between the customer and us have been settled and that the customer has performed all of his obligations. If this is not the case, the performance term shall be extended accordingly. The foregoing shall not apply if the delay is our responsibility.
- 5.2 Compliance with the performance term is subject to the condition that deliveries to us are correct and on time. We shall notify the customer of any foreseeable delays.

- 5.3 The performance term has been honoured if notice of the readiness for shipment has been given. If acceptance must be made, the acceptance date or, alternatively, our notice of the readiness for acceptance shall govern timeliness.
- 5.4 If non-compliance is attributable to force majeure, labour disputes, delays in procuring government licences or other events outside our scope of influence, the performance term shall be reasonably extended. We shall inform the customer of foreseeable delays.
- 5.5 If the dispatch or the taking over of the goods is delayed for the Customer's reasons, the Customer will be charged for the consequentially accruing additional costs. We reserve the right to assert further damage compensation claims.
- 5.6 We reserve the right to dispose of the subject of delivery if the customer has allowed a reasonable period for delivery or acceptance set by us to expire, and to supply the customer in a reasonably extended period.

## **6. Delays in performance, impossibility**

- 6.1 In the event of partial performance the Customer shall only be able to withdraw from the contract if the partial performance is verifiably of no interest to him. If this is not the case, the customer must pay the prices according to the terms of contract attributable to the partial delivery. Otherwise, section 9 shall apply. If impossibility occurs while the customer is in default of acceptance or because of customer's fault, he shall remain obliged to provide consideration.
- 6.2 If the responsibility for impossibility is not to be borne by either party, we are entitled to claim a part of the remuneration corresponding to the work performed by us.
- 6.3 Within the scope of the statutory provisions, the customer is entitled to rescind the contract.
- 6.4 Any further claims because of a default in delivery shall be governed exclusively by section 9.

## **7. Acceptance**

- 7.1 In the case of the rendering of work services, the Customer is only entitled to refuse acceptance if there is a major defect in our service which would nullify or significantly reduce the usual and/or contractually presumed use of the service and/or its value. If the work contains defects not entitling the customer to refuse acceptance, acceptance shall be made under the reservation that the defects are rectified.
- 7.2 Refusals of acceptance, objections to acceptance or reservations against acceptance must be made immediately in writing, accompanied by the designation and description of the reported defect.
- 7.3 The use of the subject of delivery by the customer shall be regarded as acceptance.

## **8. Claims for defects**

- 8.1 The following provisions also apply to legal defects or defects of quality:
  - 8.1.a Claims for defects by the customer are based on the assumption that he has properly adhered to the examination and complaint stipulations as outlined in § 377 German Commercial Code.
  - 8.1.b At our discretion we shall deliver a defect-free item or remedy the defect, provided the subject of delivery is proven to have already been defective upon the passing of risk pursuant to section 3. The customer shall notify us immediately of any defects in writing stating and describing the reported defect. We have the right to retain the title to parts replaced as part of the exchange procedure.
  - 8.1.c Defect claims are not generated as a result of causes which are attributable to a breach of duty on our part, for instance: Normal wear and tear, excessive usage, unprofessional intervention or maintenance by the customer or third parties, incomplete or incorrect information supplied by the customer, improper operation, assembly or start-up, wrong or negligent handling, improper maintenance, use of unsuitable operating materials/substitute materials, defective construction work, unsuitable subsoil, hazardous ambience conditions unknown to us, chemical, electro-chemical or electrical influences, changes to the subject of delivery made without our consent.
  - 8.1.d The customer must provide us with the required time and opportunity for subsequent performance. If we are not provided with this opportunity, we shall not be liable for any resulting consequences.

- 8.1.e In the event of remedial work we shall bear all of the costs required for the purpose of rectifying the defect, particularly transport and travel costs and the costs of labour and materials, provided these costs are not increased because the subject of delivery was moved to a site other than the place of performance.
- 8.1.f In the case of culpable responsibility for the defects on the part of the Customer, especially due to non-adherence to his obligations with regard to the avoidance and limitation of damage, we are entitled to claim corresponding damage compensation relative to the culpable responsibility of the Customer after fulfilment.
- 8.1.g The right of the Customer to withdraw from the contract is based on the statutory regulations. If only a minor deficiency exists, the Customer only has a right to reduce the contract price. Otherwise, the right to a reduction of the contract price shall be excluded.
- 8.1.h For assembly, repair and other services, section 13.9 shall apply instead of section 8.1.g.
- 8.1.i If the use of the subject of delivery within the periods set down in sections 11 results in the infringement of intellectual property rights or copyrights, we shall generally procure the right to continued use for the customer or alter the subject of delivery in such manner that an infringement of the intellectual property or copyright no longer exists. If this is not possible under commercially reasonable terms or within a reasonable period, the parties shall be entitled to rescind the contract. We shall indemnify the customer within these periods against undisputed or final and absolute claims of the owners of the intellectual property rights.
- 8.1.j Subject to section 9, our obligations described in section 8.1.i. are final and conclusive in case of infringements of intellectual property and copyrights.
- 8.1.k The claim to subsequent performance for infringements of intellectual property rights and copyrights shall only exist if
- the customer informs us immediately in writing, stating the designation and description of the alleged infringements of intellectual property rights or copyrights,
  - the customer reasonably supports us in the defence against asserted claims or enables us to carry out the modifications pursuant to section 8.1.i.,
  - we are reserved the right to undertake all defensive measures, including out-of-court settlements,
  - the infringement of intellectual property or copyrights is not based on instructions or specifications provided by the customer,
  - the infringement of intellectual property or copyrights was not caused by the fact that the customer autonomously modified the subject of delivery or used it in a manner not conforming to the terms of contract.
- 8.2 All further claims for defects under warranty (including, but not limited to, compensation for damages not occurring to the subject of delivery itself) are governed exclusively by sections 9 and 13.9.
- 8.3 In case used products are sold, all claims because of defects shall be excluded unless statutory liability applies.

## **9. Liability**

- 9.1 Our liability for damages, regardless of legal grounds, in particular due to impossibility, default, defective or incorrect delivery, breach of contract, infringement of duties during contract negotiations and/or tort, insofar as it is at fault in any case, shall be restricted in accordance with this § 9.
- 9.2 In the case of minor negligence our organs, legal representatives, employees or other agents we are not liable to the extent that this does not involve a breach of significant contractual obligations. Key elements of the contract are the obligation to deliver in a timely manner and install the goods delivered free of legal defects to the extent that such material defects more than insignificantly impair its functional performance or performance capability as well as consultancy services, protection and care to enable the ordering party to use the goods delivered in accordance with the contract or the protection of life and limb of the ordering party's staff or his property to prevent major damage or injury.
- 9.3 In so far as we are liable for damages on the grounds of and in accordance with Section 9.2, this liability is limited to damage which we could have foreseen when concluding the contract as a possible consequence of a contractual infringement or which were or should have been known by applying due care and attention. Furthermore, direct damage and consequential damage resulting from defects in the item supplied are only subject to compensation in so far as such damage is typically to be expected when using the item supplied as stipulated. Our liability for the loss of or changes to data shall be limited to the typical expense of restoration that would have accrued through making regular backup copies in accordance with the risk.

- 9.4 The compensation for purely pecuniary loss shall be limited by the general principles of good faith, for instance if the amount of loss lies unreasonably above the amount of the order and the amount of damage.
- 9.5 The aforementioned exclusions of liability and limitations of liability shall apply to the same extent to our organs, legal representatives, employees or other agents.
- 9.6 In so far as we provide technical information or act as a consultant and this information or advice is not part of the contractually agreed scope of services owed by us, this is done free of charge and with the exclusion of any liability.
- 9.7 The limitations of this Section 9 do not apply to our liability with regard to wilful conduct or gross negligence, for guaranteed features, due to injury to life, body or health, or in accordance with product liability laws.

## **10. Insurance claims**

To the extent we have direct claims as a joint policyholder against the customer's insurer with respect to the subject of delivery, the customer hereby gives his consent to the assertion of such claims.

## **11. Period of limitation**

- 11.1 Customer's claims for defects lapse in 12 months after the transfer of risk unless otherwise agreed. Notwithstanding the aforementioned period, the limitation period for defects of products of Product Groups Q calorific 5 (heat cost allocators) and Q heat 5 (heat meters) amounts to 4 complete calendar years starting with the 1st day of the year that follows the transfer of risk. If the contractual object is a building or an object that, in conformity with its customary manner of utilization, has been used as a building and which caused the defect (building material), the statute of limitations is five years as of delivery or acceptance.
- 11.2 All other claims by the customer, regardless of the legal basis of claim, shall be barred 12 months as of the passing of risk.
- 11.3 Claims for damages of the Customer that arise due to deliberate or grossly negligent behaviour that involve injury to life, limb or health and are subject to a statute of limitation under the German law on product liability lapse but solely in accordance with legal regulations.

## **12. Assembly, Repairs and Other Services**

For assembly, repairs and other services, the following provisions shall apply in addition:

- 12.1 The customer has to inform our staff at his own expense about existing safety regulations and safety hazards and has to take all necessary measures to protect persons and property at the workplace.
- 12.2 The customer has to support our staff to the extent required at his own expense in the execution of the works and to provide the required assistance, such as preparation of the site, provision of tools and lifting equipment, provision of water and electricity, etc.
- 12.3 The assistance provided by the customer has to ensure that our staff can start with their work immediately after their arrival and without delay until the inspection.
- 12.4 If the customer does not meet his obligations, we are entitled, however not obliged, to carry out the tasks instead of him and at his expense.
- 12.5 If our performance cannot be carried out by us on grounds for which we are not responsible, the customer shall compensate us for already rendered performance and any incurred time and expense.
- 12.6 Replaced parts remain our property. We reserve the right to forego our property of the replaced parts against payment by the customer.
- 12.7 Should the performance perish or deteriorate prior to acceptance through no fault on our part, the customer shall pay us the price minus any savings in expenses.

- 12.8 Repair deadlines are only binding if confirmed by us in writing.
- 12.9 In case of installations/assemblies, repairs and other services, the Customer's right to a reduction of the purchase price shall correspond to the statutory regulations. The Customer is only entitled to withdraw if the Customer provably has no interest in the assembly, repairs and other services in spite of the reduction.

**13. General**

- 13.1 All taxes, fees and levies in connection with the performance outside of the Federal Republic of Germany shall be borne by the customer and are to be reimbursed to us as the case may be.
- 13.2 Personal data shall be stored by us in compliance with the statutory regulations.
- 13.3 We shall not reimburse any costs for the return transport of packaging.
- 13.4 Customer shall procure at his own expense all of the licences and/or import/export papers for using the products.
- 13.5 Place of performance for customer's obligations in relation to us is the location of our registered offices.
- 13.6 Should individual provisions of these General Terms and Conditions or the contract be or become invalid, this shall not affect the remaining provisions.

**14. Applicable law, place of jurisdiction**

- 14.1 If customer's registered offices are located within the Federal Republic of Germany, exclusive place of jurisdiction for all disputes shall be the location of our registered offices. We reserve the right to file an action at the statutory court of the customer.
- 14.2 If the customer's registered offices are located outside of the Federal Republic of Germany, disputes shall be settled by arbitration proceedings at the International Chamber of Commerce in Paris in accordance with the ICC Rules of Arbitration. The award shall be final and absolute, and is to be made, with the grounds stated, by three arbitrators. It shall be possible for our insurance company to participate in accordance with the opportunities for participation available in proceedings before a court of law. We reserve the right to enter an action before a court of law having jurisdiction.
- 14.3 The laws of the Federal Republic of Germany shall apply with the exception of all of the provisions governing the conflict of laws and the UN Convention on Contracts for the International Sale of Goods (CISG).