

# Terms and conditions of Sale and Payment

## 1. General Provisions

1.1 We shall make deliveries only on the basis of the following Terms and Conditions.

1.2 Deviations from these Terms and Conditions of Sale and Payment shall only be valid if they are expressly agreed upon in writing.

1.3 The Purchaser's deviating terms and conditions of sale and payment shall not be recognised. On the contrary a purchase order shall be deemed to be unconditional recognition of our Terms and Conditions of Sale and Payment.

1.4 Claims of the Purchaser may not be assigned without our consent.

## 2. Tender and Conclusion of a Contract

2.1 Our tenders shall be non-binding and subject to change without notice, unless otherwise expressly agreed upon.

2.2 Purchase orders shall first be accepted once we have acknowledged the same in writing. Equally we shall acknowledge in writing any changes to our order acknowledgement as well as other agreed terms and verbal agreements.

2.3 The Purchaser shall be fully liable for the binding nature of the documents to be supplied by it, such as drawings, templates, samples or the like. Details as to dimensions, tolerances or the like given verbally shall be subject to written confirmation.

2.4 We shall reserve ownership rights and copyrights in cost estimates, sketches, drawings and other documents. Except where we have given our consent, the Purchaser may not make these accessible to third parties or use these for other purposes, particularly not for its own manufacturing purposes. These shall be returned to us without delay on request.

2.5 Samples shall only be delivered against payment of a charge.

## 3. Scope of Delivery

3.1 The scope of delivery shall be governed by our written order acknowledgement or by the accepted binding tender pursuant to subsection

3.2 Protective devices shall be included in the delivery to the extent agreed upon. We shall point out in writing any residual risks.

3.3 Electrotechnical accessories (engines etc.) shall be governed by the general rules EN 292-1, EN 292-2, EN 294 and EN 811, in so far as these relate to constructional features and performance.

3.4 During the delivery period we shall reserve the right to make changes in design and/or form due to technological improvement or legal requirements, provided that the delivery item is not significantly altered and the Purchaser can be reasonably expected to accept the alteration.

## 4. Prices

4.1 Our prices shall be in euros ex works W.-Goelzau excluding packaging and insurance and plus value-added tax at the rate applicable on the day of invoicing.

4.2 Prices or extra charges for delivery carriage paid, FOB, C&F, CIF delivery etc. shall be non-binding and shall rise where applicable commensurate with any changes in rates that have occurred.

4.3 Where the Purchaser is an entrepreneur, price changes shall be permissible where there is a period of more than six weeks between the conclusion of the contract and the agreed delivery date. If wages, the cost of materials or cost prices on the market rise thereafter before the delivery is completed, we shall then be entitled to reasonably increase the price commensurate with the increase in costs. The Purchaser shall only be entitled to cancel the contract if the price increase exceeds, not just insignificantly, the rise in the general cost of living between the time of the purchase order and the time of delivery.

## 5. Payment Terms

5.1 Unless otherwise laid down in the order acknowledgement or the accepted binding tender pursuant to subsection 2.3, the following payment terms shall apply.

5.2 Our invoices shall be payable, without any deduction, within 30 days after the invoice date. In the event of payment within 14 days after the invoice date, we shall allow a 2 % cash discount, unless otherwise agreed upon in writing.

5.3 It is deemed agreed that special makes, i.e. manufactured items deviating from those defined in the catalogue, and orders for standard articles whose value exceeds EUR 10,000.-- shall be governed by the following payment terms:

- 30 % of the order value at the time of placing the order
- 30 % of the order value upon notification of order completion, but prior to delivery
- 30 % of the order value at the time of invoicing
- 10 % of the order value within 30 days after the invoice date,

in each case net and inclusive of pro-rata VAT.

5.4 In the case of special machines, a deviating method of payment shall be laid down in writing.

5.5 Payments by bill of exchange or cheques shall not be accepted.

5.6 In the event of late payment, we shall charge interest at the rate of 5 % above the respective base interest rate without having to give a specific reminder. We shall reserve the right to assert further damages. Where the Purchaser is an entrepreneur, interest shall be charged at the rate of 8 % above the respective base interest rate.

5.7 Offsetting against counterclaims that are undisputed or have been declared final and absolute shall be permissible. Where the Purchaser is an entrepreneur, a legal entity under public law or a special fund under public law, the Purchaser shall not be allowed to withhold payments on account of any counterclaims which we have not recognised. Nor shall the Purchaser be allowed to offset against such counterclaims.

5.8 If it becomes known that the Purchaser is in an unfavourable financial position following the conclusion of the contract, we shall be entitled to demand immediate payment or the provision of adequate security or, without being obliged to pay compensatory damages, to also cancel the contract and defer the performance of orders still to be carried out.

5.9 In the event that the Purchaser ceases payments or becomes insolvent, the purchase-money claim shall be immediately due in full. At the same time all envisaged rebates, bonuses etc. shall be deemed forfeited, such that the Purchaser must pay the gross prices invoiced.

## 6. Delivery Period

6.1 The delivery period shall first begin once all preconditions for the performance of the order have been met, in particular once all details relating to performance have been clarified (amongst other things once we have received requested plans and samples for the set-up of the machinery and equipment ordered) and both Parties have agreed upon all terms and conditions of the contract. The delivery period relates to completion at the works.

6.2 The delivery period shall first begin once the Purchaser has performed all its contractual duties, in particular once the agreed down payment has been received.

6.3 Unforeseen events, for example plant interruptions, strike, lockout, rejection of a part that cannot be immediately replaced at our works or at a subcontractor, default on the part of a subcontractor or necessary modifications due to new information or findings, shall reasonably extend the delivery period, even if such an event occurs during default in delivery. The same shall occur if official or other permits or documents of third parties necessary for making deliveries are not received in due time and equally if the purchase order is subsequently altered. The Purchaser shall be informed of such changes to the delivery period.

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6.4 Where the Purchaser is an entrepreneur, performance by instalments shall be permissible. The payment terms under section 5 apply mutatis mutandis to performance by instalments.

6.5 If we are otherwise in default, the Purchaser may claim in the event of damages compensation at the rate of no more than 0.5 % of the price of the outstanding delivery for every full month of delay, but under no circumstances more than 5 % of the value of the outstanding delivery. An entitlement to a contractual penalty shall be subject to the prior written consent of the Supplier.

6.6 If dispatch is delayed at the Purchaser's request, we shall then be entitled to charge for costs incurred as a result of storage, beginning two weeks after notification of readiness for dispatch. We shall charge for storage at our works at the rate of at least 0.5 % of the invoiced amount for every month or the actual storage cost. Once this period has expired to no avail, we may sell the goods elsewhere and supply the Purchaser within a reasonably extended period.

## 7. Passage of Risk

7.1 Where the Purchaser is an entrepreneur, risk shall pass to the Purchaser at the time of dispatch ex works.

7.2 If dispatch is delayed due to circumstances for which we are not responsible and where the Purchaser is an entrepreneur, risk shall already pass to the Purchaser as from the day of readiness for dispatch.

7.3 Insurance cover against transport damage shall be taken out at the Purchaser's expense, except where the Purchaser has provably taken out insurance cover itself and is an entrepreneur.

## 8. Packaging and Dispatch

8.1 The goods shall be packaged and dispatched at our discretion as customary in the trade.

8.2 Packaging shall be charged at the cost price. In the event that packaging material is returned carriage paid in recyclable condition, a credit note for no more than 2/3 of the value charged shall only be issued if agreed upon beforehand in writing.

8.3 In the absence of any specific instruction, the transport route and the means of transport shall be selected to the best of our judgement without any liability whatsoever for a cheaper method of carriage or a shorter route.

8.4 If goods ready for dispatch cannot be delivered at the envisaged time due to circumstances for which we are not responsible, they shall be stored on our premises for the Purchaser's account.

8.5 We shall use recyclable packaging. Special packaging shall be made of untreated wood.

## 9. Commissioning

9.1 The Purchaser shall bear expenses incurred in connection with mechanic's rates and field allowances when commissioning, including in particular expenses in connection with overtime and work on Sundays and public holidays under German law. Travel time and waiting time shall be deemed working time.

9.2 The Purchaser shall bear the cost of journeys there and back as well as the cost of transporting tools and luggage.

## 10. Warranty, Liability for Defects in Delivery

10.1 If parts that are exposed to greater wear and tear, for example parts used for up to 40 hours a week or in double-shift operation, become unusable or considerably less usable within a 6-month period or within a 3-month period in the case of double-shift operation, it shall be assumed that the impairment is due to wear and tear, unless this assumption is inconsistent with the type of item or the type of impairment.

10.2 Defects shall be reported in writing without delay. The Purchaser shall bear extra costs incurred due to a delay in reporting defects. This

shall not affect sec. 377 of the German Commercial Code [HGB]. Where the Purchaser is an entrepreneur, obvious defects shall be reported without delay. In the case of other defects, a notice of defects shall be deemed to have been given without delay if the defects are reported after they are discovered, no later than two weeks after delivery. Transport damage may only be acknowledged if a clean receipt has not been issued.

10.3 Where the Purchaser is an entrepreneur and where dispatch, installation or commissioning is delayed due to circumstances for which we are not responsible, liability shall lapse no later than 12 months after the passage of risk.

10.4 We shall not be liable for damages due to improper or unsuitable use, faulty assembly or faulty commissioning by the Purchaser or a third party, normal wear and tear, improper or negligent handling or treatment, excessive use, unsuitable operating materials, penetration of foreign bodies, unsatisfactory work in respect of third-party deliveries or external influences.

10.5 We shall be liable for third-party products only to the extent of time and subject-matter for which the subcontractor has given us a warranty.

10.6 The Purchaser shall give us the time and opportunity necessary for remedying defects and delivering a replacement. Otherwise we shall be released from liability for defects. We shall bear the cost of carriage, transport, labour and materials incurred in connection with remedying defects or delivering a replacement, in so far as the complaint is justified.

10.7 In respect of direct costs incurred in connection with remedying defects or delivering a replacement, we shall bear the cost of the replacement part ex works, in so far the complaint is justified. The Purchaser shall bear all other costs including travel expenses and assembly expenses.

10.8 The warranty claim shall lapse once the Purchaser or a third party appointed by it independently carries out alterations or repair work, also for commissioning, without our written approval.

10.9 There shall be no entitlement to compensation for damages that have arisen on the delivery item itself, unless the damages incurred are due to an assurance given.

## 11. Scope of Liability

11.1 Our liability for breaches of duty on our part and for breaches of duty on the part of our vicarious agents and/or persons assigned by us to perform an obligation shall be limited to intent and gross negligence. Excluded from this limitation is liability on account of loss of life or injury to body or health.

## 12. Cancellation, Reduction in the Contract Price, Compensatory Damages

12.1 The Purchaser shall have a right to cancel the contract and a right to reduce the contract price

- where the Purchaser has granted us a reasonable additional period within which to remedy a defect for which we are responsible and we have allowed this period to expire to no avail,
- where it is impossible to repair or procure a suitable replacement part,
- where we refuse to remedy a defect that has been proven to us.

12.2 The Purchaser shall have no warranty claim for compensatory damages in lieu of performance.

## 13. The Supplier's Right to Cancel the Contract

13.1 If it subsequently emerges that we are unable to perform the contract, we shall equally have the right to cancel the contract in whole or in part.

13.2 The Purchaser shall have no claims for compensatory damages on account of such a cancellation.

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## 14. Reservation of Title

14.1 We shall reserve title in the delivery item until all accounts receivable that have arisen from the business relationship between us and the Purchaser have been paid. Where the Purchaser is an entrepreneur, a legal entity under public law or a special fund under public law, we shall additionally reserve title in the delivery item until all accounts receivable that have arisen and arise in future from the business relationship or on any other legal basis between us and the Purchaser have been paid.

14.2 Where the validity of this reservation of title is linked with specific prerequisites or formal requirements in the Purchaser's country, the Purchaser shall be obliged to ensure that these are met at its expense.

14.3 The Purchaser may only dispose of the delivery item in the normal course of business. Other dispositions, particularly pledging of security transfers, shall not be allowed. In the event of a levy of execution, seizure attachment or any other disposition by a third party, the Purchaser shall notify us thereof without delay and make available to us all information and documents necessary for safeguarding our rights. Our ownership rights shall be pointed out to executory officers and/or third parties.

14.4 Any processing of the delivered goods shall occur on our behalf, without placing us under any obligation. In the event that the Purchaser processes, mixes or combines our goods with other goods not belonging to us, we shall be entitled to co-ownership of the new item in the ratio of the value of the goods under reservation of title to the value of the other goods at the time of processing, combining or mixing. If the Purchaser acquires sole ownership of the new item, we and the Purchaser agree that the Purchaser shall grant us co-ownership of the new item in the ratio of the value of the processed, combined or mixed goods under reservation of ownership to the value of the new item and shall act as a custodian thereof for us free of charge.

14.5 The Purchaser already now assigns to us the claim arising from the deselling of goods under reservation of title, regardless of whether the goods are sold without or after having been processed, combined or mixed. We accept the assignment of the claim. In the event that goods under reservation of title are sold after having been processed, combined or mixed with other goods not belonging to us, the claim shall be deemed assigned in the sum of the value of our goods under reservation of title. The Purchaser shall be entitled to collect accounts receivable arising from reselling as long as it meets its obligation under the contract. Measures or circumstances which jeopardise our security rights shall be made known to us without delay, giving all details.

14.6 We shall be entitled to insure the delivery item at the Purchaser's expense against fire damage, water damage or other damage, unless the Purchaser has provably taken out such insurance cover itself.

14.7 The Purchaser shall be obliged to report to us without delay any intervention by a third party in respect of goods delivered under reservation of ownership and rights assigned to us. If we take back goods that we have delivered under reservation of title, this shall only be deemed cancellation of the contract if we make this expressly known to the Purchaser in writing.

## 15. Place of Performance and Jurisdiction

15.1 Our works in W.-Goelzau are the place of performance for delivery and payment.

15.2 In the event of disputes arising from the contractual relationship and where the Purchaser is a merchant, a legal entity under public law or a special fund under public law, a lawsuit shall be filed at the court that has jurisdiction over our principal place of business. We shall also be entitled to file a lawsuit at the Purchaser's principal place of business.

15.3 German law is exclusively applicable, excluding laws governing the international sale of movable property, even if the Purchaser is domiciled abroad.

## 16. Cancellation Costs

16.1 If the Purchaser cancels a placed order without justification, we may claim 10 % of the selling price for costs incurred in connection with processing the order and for lost profit, without prejudice to the possibility of asserting higher actual damages. The Purchaser shall reserve the right to prove lower damages.

## 17. Miscellaneous

17.1 To become effective, any transfer of rights and duties of the Purchaser arising from the contract concluded with us must have been consented to by us in writing.

17.2 If a provision is or becomes null and void, this shall not affect the validity of the other provisions.

Pursuant to the German Data Protection Act [BDSG], we point out that we shall store and process corresponding data concerning you.