

## Terms and Conditions of Delivery and Payment

### **1. Basis of Contract**

For the contractual relationship, as well as the pre- and post-contractual rights and duties and further business relations (e.g. also rental agreement) the following regulations are applicable; at deviations in the order given:

1. The preceding wording of contract as individual agreement.
2. The subsequent terms and conditions of delivery and payment; offers/quotations, sales, work supplies, work services and all other services are rendered on the basis of the terms and conditions stated hereinafter, even if not expressly referred to once more; this is applicable particularly with regard to running business connection; the business conditions of the customer are vetoed.
3. The binding arrangement drawing
4. The laws and regulations of the Federal Republic of Germany, with the exception of any cross-reference therein to the laws of other states, international and supranational organizations.

Deviating agreements and covenants made by our representatives or employees are only effective if confirmed in writing by the general management. Agreements setting aside the written-form requirement require to be made in the written form.

### **2. Offers/quotations and Conclusion of Contract; Scope of Delivery**

Offers of the seller are without engagement. Therefore, drawings, measurements, weights and other performance data are only binding if expressly agreed upon in writing. The contract is concluded effectively only if the agreements made by a representative are confirmed in writing by the sales manager. The sales employees of the seller are not entitled to make any verbal agreements exceeding the contents of the written contract and the written confirmation by the sales manager.

The offers, drawings and all other documents describing the goods and services are subject to copyright protection in the relationship with the customer. Property remains with the seller. The customer will not disclose these data to any third party unless in consent with the seller. Their disclosure in particular to the seller's competitors is excluded.

Protective devices are supplied only if agreed upon.

### **3. Prices**

Prices are to be understood ex stock or ex works, without packing, forwarding expenses and insurance to be covered on request of the customer.

### **4. Permission and Drawing**

The customer effects all necessary permissions. They are in his sphere of responsibility. The customer is obliged to check thoroughly and to counter-sign the presented execution and installation drawing He makes available all documents necessary for a potential installation (e.g. drawings, sketches) well in advance of the delivery.

### **5. Delivery**

The seller makes the effort to keep delivery times. Delivery dates are always to be considered approximate. Adherence to the delivery date requires as a precondition the fulfilment of the contractual obligations of the customer. Should the customer require alterations of the scope of delivery or of the installation deviating from the wording of the contract, a confirmation of the sales manager or the execution drawing, the delivery time is protracted according to the extent of the necessary works.

Should the seller be in default due to gross negligence after receipt of a reminder, the customer is entitled to the rights according to § 326 BGB only if he has set a new appropriate period of grace of at least 2 weeks duration. There are no further claims due to default. The maximum liability amount is set to the equivalent of 25% of the contract price. No compensation for loss of profit will be made. Partial shipments are allowed and have to be paid for.

### **6. Passing of Risk**

The seller endeavours to arrange an appropriate forwarding of the goods. By handing over the goods to the person executing the transport, respectively upon arrival of the goods on the customer's premises (provided that they are transported by ZENO), risk is passing to the customer.

## **7. Defects**

Minor deviations in colour and shape which do not interfere with the value or the suitability of the goods according to prevailing practice, are no defects of the goods. Furthermore, no defects are impairments resulting from improper use, works carried out on the goods by third parties or the customer, natural wear, incorrect or negligent treatment – particularly overstraining -, inadequate supplies, exchange materials, defects or unsuitability of constructions provided by the customer, chemical, electro-chemical influences, as far as they do not result from a fault of the seller. The customer undertakes to operate and maintain the good strictly in accordance with the operations and maintenance manuals.

Descriptions and representations in brochures and advertising material do not warrant any properties. It is incumbent on the customer to explain in detail the purposes of operation of the machine to enable the seller to examine its suitability on express request in writing.

Apparent defects must be notified in writing within two weeks time after receipt of the goods, in case of installation after integration; otherwise warranty is excluded.

Warranty period is 12 months, excluding wear items or 2000 operating hours, whichever comes first, excluding wear items. For sales of second-hand goods warranty is excluded.

Machines respectively equipment are configured in a modular system. Therefore, they can be exchanged and can be removed from the property they have been installed in without damaging or altering the essence of the property or the equipment therein.

## **8. Installation**

The customer places at the seller's disposal at no cost the necessary storage- and working surfaces on the site, the existing access routes and adequately fused electrical connections.

## **9. Liability for Defects**

The customer can claim rectification of defects of the goods. On failure of the rectification he can claim replacement delivery. On failure of the replacement delivery he can claim reduction in price or rescission.

Warranty can be denied until the customer has paid an amount at least to the value of the delivery. Due to defects and irrespective of the regulations of clause 12. at the most a right of retention amounting to the triple costs of the rectification of defects is possible.

## **10. Damages**

Claims for damages against the seller are given exclusively on default in the form of gross negligence or intent. Independently thereof liability for consequential damage is excluded. The maximum liability amount is the contract sum.

## **11. Retention of Property**

The good remains in the property of the seller until full payment of the purchase price and all incidental expenses. Until this moment the customer is not entitled to pledge or to charge the goods in any other form. On access of third parties (e.g. distress or similar) the customer is obliged to allude to the property rights of the seller and to inform him immediately. The costs for the defence of such access are borne by the customer. The seller can demand the marking of the merchandise as his property. The customer is allowed to modify, or displace or cede to third parties the goods still in the property of the seller only with a written consent of the seller. The customer is not allowed to connect the merchandise to a piece of real estate or a building only for a permanent purpose or to another object to form a consistent object until the passing of property to him. The customer insures the merchandise sufficiently for the protection of the proprietor and in the case of an insured event cedes in advance any payments of the insurance company to the seller.

Is an object handed-over to the seller for repair by the customer, seller and customer agree that the seller gains a contractual lien to the thing for coverage of his claim of wage. The customer assures to be the proprietor of the object.

## **12. Payment**

Payment is due immediately, amounts are payable without any deduction as follows:

20% at contract signing, after receiving the down payment invoice

70% at readiness of shipment, prior to delivery

10% immediately after delivery, before the start of assembly

A set-off by the customer is only possible in so far as he is setting-off with an undisputed or legally filed claim. The customer has a right of retention in so far as he holds an undisputed or legally valid claim.

Does the customer not pay in due time the seller can claim interest on default of 5% above the basic interest rate according to § 288 BGB unless he is claiming a higher default damage. The customer may prove that the damage has not occurred at all or is significantly less. In this case settlement is made for the smaller amount.

### **13. Cancellation of Contract and Indemnity**

Is the contract not executed due to reasons caused by the customer or does the seller deny the execution of the contract because the customer has not met his obligations in spite of a granted extension of time, the customer is obliged to pay 15% of the purchase price including VAT without any proof of actual damage in case of purchase of repetition products. The customer may prove that the damage has not occurred at all or is significantly less. In this case his payment has to be made for the amount proven. The seller is entitled to prove and claim an amount higher than the generalized amount.

On manufacture of a customized individual product damage of loss of profit of 15% of the purchase price including VAT is claimed without any prove of actual damage and additionally all proven pre-manufacture costs are claimed. The customer may prove that the damage has not occurred at all or is significantly less. In this case his payment has to be made for the amount proven. The seller is entitled to prove and claim an amount higher than the generalized amount.

### **14. Litigation**

Legal venue for both parties is at the place of head office of the seller. This also applies to draft or cheque obligations.

### **15. Miscellaneous**

Cessions by the customer are not possible.

Should one or more clauses be or become legally invalid or unenforceable, the contract and these terms and conditions remain valid for the rest.

Instead of the invalid or unenforceable clause a provision shall be deemed to be agreed which comes as close as possible to the economic purpose of the invalid or unenforceable provision.

These terms and conditions of delivery and payment apply unless otherwise agreed in writing.