

## General Terms of Sale and Delivery

### §1 General Provisions - Scope

- (1) Our terms of sale (these "Terms of Sale") shall apply exclusively. Any conflicting terms and conditions or any terms and conditions of the purchaser deviating from our Terms of Sale are not accepted by us unless expressly consented thereto by us in writing. Our Terms of Sale shall apply even in cases where we make delivery to the purchaser without reservation although we have been aware of any conflicting or deviating terms and conditions of the purchaser.
- (2) Our Terms of Sale shall also apply in such cases where the same have not been received by the purchaser in the course of executing the contract, but where the purchaser had or must have had knowledge thereof under a previous business relationship.
- (3) Our Terms of Sale shall apply only vis-à-vis enterprises within the meaning of sections 310 par. 1, and 14 of the German Civil Code ("BGB").
- (4) Our sales and field staff is not authorized to make any agreements deviating from the terms set forth herein after except where such agreement is made in writing.

### §2 Quotes - Quote Documentation - Contract Conclusion - Catalogs - Printed Matter - Letters etc.

- (1) Our quotes are subject to change with regard to prices, quantities, and delivery times and facilities. The furnishing of price lists shall not constitute a quote.
- (2) A binding contract shall be established only by our written acceptance as an order. The substance and performance of any order shall be determined exclusively by our written order confirmation and the product specifications and services set forth therein.
- (3) Any special designs to be produced on the basis of drawings, in particular for prefabricated installation components, require reliable information at the time the order is placed; in such cases, production shall be based on the drawings approved and signed-off by the purchaser. Orders placed for special designs shall be irrevocable. The costs of any technical changes subsequent to the placement of the order shall be borne by the purchaser.
- (4) Any accompanying documents such as images, drawings, stated weight or dimensions shall not be binding unless expressly marked as being binding. Where flow rates are stated in our catalogs, such values are intended only to facilitate the correct selection and dimensioning of the products to be installed.  
All technical data as well as references to standards, examination notices, technical regulations, etc. stated in our catalogs and printed matter refer to such data or references as valid and in force at the time in of printing; however, we reserve the right to apply technical changes by further development as well as improvements. The foregoing shall also apply to purchase orders, provided that no such change shall materially prejudice the purchaser's interests or alter the basic specifications of the products ordered, and that any such change can be reasonably imposed on the purchaser.
- (5) Title and copyright in all cost estimates, catalogs, drawings, drafts, and images furnished by us is and shall be reserved. No such documents shall be copied or disclosed to any third party for whatever purpose without our consent. To the extent that items are delivered by us based on drawings, models, or specimen provided to us by the purchaser, the purchaser shall warrant that such items do not infringe upon any proprietary rights of any third party.
- (6) The quality and dimensions of materials supplied by us shall be in accordance with the German materials standards unless the application of any foreign materials standards has been expressly agreed. Where no DIN standards exist, the relevant technical regulations shall be applicable.

- (7) Upon accepting an order, we assume that the purchaser is of good financial standing. If this precondition is not met at the time of contract conclusion, or if it ceases to be met at any time thereafter, we shall be entitled to cancel the contract or demand immediate payment, even if time for payment has been previously allowed.

### §3 Prices - Terms of Payment

- (1) Unless otherwise agreed to in the order confirmation, our prices shall be in Euro "ex works" net of insurance, freight, customs, and packaging, which will be invoiced separately if appropriate. If delivery is agreed "carriage free", prices are free purchaser's address or construction site without unloading.
- (2) Paragraph (1) of this section 3 shall apply also if the order is composed of multiple partial deliveries as requested by the purchaser, provided that the foregoing shall not be applicable if the partial delivery is caused by any circumstance for which we are accountable.
- (3) Our prices do not include statutory value added tax which will be stated separately in the invoice in the statutory amount effective on the date of the invoice.
- (4) Unless otherwise agreed, our invoices are payable in Euro, clear of any costs and charges. If payment in cash is received by us within 14 days from the date of invoice, we will allow 2% discount, notwithstanding any agreement to the contrary.  
The date relevant for the applicability of a discount shall be the date on which payment is received by us. A precondition for the allowance of a discount is that all due and payable payment obligations from previous deliveries have been met in full. The deduction of discount, rebates, or any bonuses, if any, shall be made from the invoiced amount net of any freight, postage, insurance, shipment, or other incidental costs. Unless stated otherwise in the order confirmation, the purchase price shall be due and payable net (without deductions) within 30 days of the date of invoice. The statutory provisions on the consequences of default in payment shall apply.
- (5) The purchaser shall not be entitled to any set-off unless his counterclaims have been validly determined and are uncontested or has been accepted by us. The purchaser shall have a right of retention only if and to the extent that his counterclaim is based upon the same contractual relationship, has been validly determined, and is uncontested or has been accepted by us.

### §4 Delivery Time, Delivery

- (1) Unless a "binding delivery date" has been expressly stated or confirmed as such by us in writing, any delivery dates stated by us relate to the date of dispatch ex works and constitute an estimated delivery period only. The commencement of the delivery time stated by us is contingent upon all technical and commercial issues being settled. We are entitled to accelerated delivery; partial deliveries are permitted and impose the obligation upon the purchaser to pay the pro-rata purchase price applicable thereto, unless such partial delivery would be unreasonable for the purchaser.
- (2) Adherence to an agreed binding delivery date shall be furthermore contingent upon the purchaser meeting his obligations properly and in due time. The defense of lack of performance of the contract shall be reserved.
- (3) If the purchaser is in default of acceptance or otherwise culpably breaches any of purchaser's duties to cooperate, we shall be entitled to claim reimbursement of any damages incurred by us in connection therewith including any additional costs incurred, if any. The right to claim additional indemnities remains reserved.
- (4) Upon the occurrence of an event as described in paragraph (3) hereof, the risks of accidental loss or deterioration of the goods purchased hereunder (the "Purchased Goods") shall pass to the purchaser at the time the purchaser's default of acceptance or performance occurs.
- (5) To the extent the underlying agreement of purchase and sale constitutes a firm bargain within the meaning

of sec. 376 of the German Commercial Code ("HGB"), we shall be liable under the applicable statutory provisions. We shall furthermore be statutorily liable if, as a consequence of a default in delivery for which we are accountable, the purchaser has the right to claim that his interest in a further performance of the contract has ceased.

- (6) We shall furthermore have a statutory liability if the default in delivery is caused by a willful or gross negligent breach of contract attributable to us; a fault committed by our agents or servants shall be attributable to us. If the default in delivery is not caused by a willful breach of contract attributable to us, then our liability for damages shall be limited to those damages that are foreseeable and typically occurring.
- (7) We shall also be liable under the statutory provisions to the extent that the default in delivery attributable to us is caused by a culpable breach of a material contractual obligation; in such case however the liability for damages shall be limited to those damages that are foreseeable and typically occurring.
- (8) In all other cases of a default in delivery we shall be liable in the form of lump sum damages in the amount of 0.5% of the value of goods to be delivered for each full week of default but not exceeding a total amount of 5% of the value of goods to be delivered.
- (9) Additional statutory claims and rights of the purchaser shall remain reserved.
- (10) In any cases beyond our control, such as e. g. force majeure, strikes, natural disasters, etc. we shall be entitled to cancel the contract. The preceding sentence shall apply also if any materials required to fulfill the order and ordered from our suppliers are not or not timely received by us due to reasons beyond our control. A cancellation under the second sentence of this paragraph shall be contingent upon us promptly notifying the purchaser of the non-availability and reimbursing the purchaser for any consideration already paid.
- (11) Call dates under blanket or call orders must be notified by the purchaser at least 14 days prior to delivery. For special designs, reasonably extended periods shall apply.
- (12) If the purchaser defaults in accepting our performance, then after having notified the purchaser accordingly and having set a grace period of 14 days we shall be entitled at our option to either cancel the contract or claim damages instead of performance.

#### **§5 Transfer of Risk, Packaging**

- (1) Shipment will be made for purchaser's account and risk. The purchaser shall bear the risk even if the costs of shipping are paid by us in exceptional cases. The transfer of risk shall occur upon handing over the goods to the carrier or mail service or, if picked up by the purchaser, upon handing over the goods to the purchaser. In case of a permitted partial delivery, such transfer of risk shall occur already upon handing over the first partial delivery as aforesaid. The transfer of risk shall occur even if the persons mentioned in the third sentence of this paragraph are in default of acceptance.
- (2) Depending on the respective items, delivery of our products shall be made in paper board containers, plastic bags, pallet cages or non-returnable pallets, wooden crates, or in bundles with lifting straps attached if necessary. If not agreed otherwise, we shall select the type of packaging and shipment.
- (3) If pallet cages, clamp pallets, or small containers are used for shipment, the same shall be made available on loan. Any pallets or containers so made available on loan and not returned shall be charged at customary rates. If the purchaser is member of a pallet pool, an exchange of pallets can be performed contemporaneously upon

delivery of the goods. Special packaging costs for specific shipments abroad or upon request of the purchaser as well as the return shipment of pallets or containers used for shipments abroad shall be charged separately.

- (4) We have joined the "Industry Solution" and contracted with INTERSEROH for the disposal of transport and sales packaging material.
- (5) Our products shall be stored in dry condition with sufficient ventilation.

#### **§6 Liability for Defects**

- (1) In addition to the applicable statutory provisions we assume liability for another 3 years.
- (2) We assume liability only for the usability of the Purchased Goods for the intended use as set forth in the contract. Purchaser's duty to make sure that the goods are suitable and usable for the purposes intended by the purchaser shall remain unaffected thereby.
- (3) Purchaser shall have no claims based on defects if the defect is attributable to a breach of operating, installation, and/or laying instructions, unsuitable or improper use, defective or negligent handling by the purchaser, natural wear and tear, improper maintenance, or any interference with the delivered item by the purchaser or any third party.
- (4) The validity of purchaser's claims based on defects hereunder shall be contingent upon purchaser having properly and timely fulfilled all of purchaser's investigation and notification obligations under sec. 377 of the HGB.
- (5) If a defect exists in the Purchased Goods, we shall be entitled at our option to either remove the defect or deliver a new item free of defects in replacement. In case of the removal of defects, we shall be obliged to pay all costs required for the purpose of removing such defects, including in particular any transport, travel, work, and materials costs, provided that such costs are not increased by the fact that the Purchased Goods have been moved to a location other than the place of performance hereunder. Purchaser shall grant us the opportunity to perform the removal of defects on our own.
- (6) If the defect is not cured after two attempts to do so, then purchaser shall be entitled at purchaser's option to either cancel the contract or reduce the purchase price.
- (7) The provisions on limitation of claims set forth in sec. 7 hereunder shall apply analogously with respect to the limitation of any claims provided for in this sec. 6, with the exception of any claims under sections 478, 479, 438 par. 1 no. 2, 634a par. 1 no. 2 of the BGB.

#### **§7 General Liability**

- (1) We shall be liable in accordance with the applicable statutory provisions if the purchaser claims damages based on willful conduct or gross negligence, including the willful conduct or gross negligence of our agents or servants. If and to the extent that we are not held accountable for a willful breach of contract, our liability for damages shall be limited to those damages that are foreseeable and typically occurring.
- (2) We shall be liable under the applicable statutory provisions for any material breach of contract culpably committed by us. However, in such cases our liability for damages shall be limited to those damages that are foreseeable and typically occurring.
- (3) Any liability for death, bodily injury, or injury to health shall remain unaffected. The foregoing shall apply also with respect to the mandatory liability under the Product Liability Act or a warranty.
- (4) Any liability for damages in excess of the liability set forth in this sec. 7 shall be excluded regardless of the legal nature of the claim. The foregoing shall apply in particular but not being limited to any claims for damages based on fault at contract conclusion, other breach of duty, or any claims in tort for property damages pursuant to sec. 823 of the BGB.
- (5) To the extent our liability for damages is excluded or limited hereunder, such exclusion and limitation shall also apply with respect to the personal liability for damages of our officers,

- employees, agents, and servants.
- (6) Claims for damages shall be subject to a limitation period of 1 year, provided that no willful act has been committed by us and not claims are being raised for death, bodily injury, or injury to the health of any person.

### **§8 Retention of Title**

- (1) Title to the products delivered by us (the "Retained Goods") shall be retained by us until we have received all payments owed to us by the purchaser under the existing current account relationship (business relationship). Such retention of title shall relate to the acknowledged balance of due payments. Upon breach of contract by the purchaser, including in particular but without being limited to purchaser's failure to pay, we shall be entitled to take back the Purchased Goods, such taking back not constituting rescission of the contract by us unless we shall expressly declare such rescission in writing. Seizure of the Purchased Goods shall always constitute rescission of the contract by us. Upon taking back the Purchased Goods we shall be entitled to liquidate the same; the proceeds from liquidation – less reasonable costs incurred upon liquidation – shall be applied to purchaser's liabilities owed to us.
- (2) Purchaser shall be obliged to handle the Retained Goods with care, and without limiting the generality of the foregoing purchaser shall be obliged to take out and maintain at purchaser's expense sufficient insurance against fire, water, and theft at replacement value. If maintenance or service work is required, then purchaser shall carry out or cause to be carried out such work in due time and at purchaser's expense.
- (3) In the event that an attachment, seizure, or other interference is brought by any third party, the purchaser shall promptly notify us in writing to enable us to take action under sec. 771 of the German Code of Civil Procedure ("ZPO"). To the extent that the third party is unable to reimburse us for the costs of such action under sec. 771 of the ZPO incurred by us in and out of court, then purchaser shall be liable to pay any costs not recoverable from the third party.
- (4) Purchaser shall be entitled to resell the Purchased Goods in the ordinary course of his business; however, purchaser hereby assigns all payments owing to him from purchaser's customers or other third parties as a result of such resales up to the total amount (including VAT) invoiced by us and owed by purchaser to us hereunder, regardless of whether the Purchased Goods have been resold without any processing or after processing by purchaser. Purchaser shall remain authorized to collect such amounts receivable notwithstanding this assignment, our right to collect such amounts receivable on our own remaining unaffected thereby. However, we agree and undertake that we will not so collect any of the amounts receivable by purchaser as long as purchaser meets his payment obligations hereunder out of the received sales proceeds, does not commit a default in payment, in particular does not become subject to a petition in insolvency or suspends payment of purchaser's debts.

Upon the occurrence of any one of the preceding events, we may demand purchaser to disclose to us the amounts receivable assigned hereunder together with the debtors owing the same, to provide to us all information necessary to collect the same and to hand out to us all related documents, and to notify the debtors (third parties) of the assignment hereunder. Purchaser shall not be entitled to dispose of the Retained Goods in any way other than set forth hereinabove, and in particular but without being limited thereto purchaser shall not

be entitled to pledge or transfer title in the Retained Goods by way of security. No assignment of the amounts receivable from the resale of our Retained Goods shall be permitted.

- (5) Any processing or alteration of the Purchased Goods by the purchaser shall be on our behalf in all circumstances. If the Purchased Goods are being processed together with any other items not owned by us, then we shall become a co-owner to the newly created item in the proportion of the value of the Purchased Goods (total invoiced amount incl. VAT) to the value of the other processed items at the time of such processing. In all other respects, the goods resulting from such processing shall become subject to the same limitations and provisions applicable to the goods purchased and retained hereunder.
- (6) If the Purchased Goods are being mixed inseparably with other items not owned by us, we shall become a co-owner of the newly created item in the proportion of the value of the Purchased Goods (total invoiced amount incl. VAT) to the value of the other items so mixed at the time of mixing. If such mixing is done in a manner by which the purchaser's item shall be regarded as the main item, then it is hereby agreed that the purchaser transfers pro-rata co-ownership to us. Purchaser shall store the sole or joint property created thereby on our behalf.
- (7) As a further security for the debts owed by purchaser to us hereunder, purchaser shall also assign to us such receivables owed to purchaser by any third party as a result of incorporating the Purchased Goods into real property.
- (8) We undertake upon request of the purchaser to release any of the securities provided to us hereunder to the extent that the realizable value of such securities exceeds the debts secured thereby by more than 10%; the selection of the securities to be so released shall be at our discretion.

### **§9 Returns**

- (1) Standard goods delivered by us may be taken back after prior agreement, provided such goods have not been processed and are in a resalable condition. Any return so made must be free of charge for us.
- (2) Any special designs, i.e. non-standard goods, shall not be returnable and will not be taken back.
- (3) Upon any return of goods, a handling charge equal to 15% of the respective purchase price and, if a reconditioning (e.g. cleaning, re-coating, re-galvanizing, re-packaging, etc.) is required, additional reconditioning costs on a time and materials basis will be deducted from the goods returned credit.
- (4) For all distance selling contracts the statutory right of withdrawal for customers is regulated in § 13 BGB (German Civil Law) in connection with § 9 (1-3)

### **§10 Data Protection**

We shall be entitled in compliance with the German Federal Data Protection Act ("BDSG") to collect, store, transfer, process, and use such data becoming known to us in connection with the business relationships with our customers.

### **§11 Jurisdiction; Place of Performance**

- (1) If the purchaser is a merchant, jurisdiction shall be in the courts located at our place of business. Notwithstanding the foregoing, we shall also have the right to take action against the purchaser in the competent courts at purchaser's general legal venue.
- (2) The laws of the Federal Republic of Germany shall apply; applicability of the UN Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.
- (3) Unless otherwise stated in the order confirmation, our place of business shall be the place of performance.

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