

General Sales and Delivery Conditions

1. GENERAL, SCOPE

- 1.1 Our general sales and delivery terms only apply to business-to-business transactions.
- 1.2 Our services and supplies are exclusively based on these General Sales and Delivery Conditions. Contradictory, deviating or completing purchase conditions of the buyer are not accepted unless we expressly confirm them in writing.
- 1.3 All proprietary rights and copyrights to cost estimates, drawings, patterns, and other documents are reserved. They may not be made available to third parties without our prior agreement and must be returned to us immediately on request should no order be placed.
- 1.4 Our General Sales and Delivery Conditions shall also apply to future business transactions even if not specially stipulated. Tele-phonically or oral agreements, additional understandings, affirmations and covenants, or later modifications of the contract are subject to our agreement in writing.

2. CONCLUSION OF THE CONTRACT

- 2.1 The contract will only be valid after having received our order confirmation in writing or after delivery of the goods.
- 2.2 Technical modifications as well as changes of shape, colour and/or weight are reserved within a reasonable scope.
- 2.3 An order means a binding offer. We may accept this offer within two weeks after receipt by sending an order confirmation, or by delivering our performances at the customers within this time.

3. PRICES AND PAYMENT

- 3.1 Unless otherwise agreed, our prices are calculated ex works (FCA Volketswil) and do not include freight, packing, loading etc. or the legal VAT. Payment is due on receipt of the goods and receipt of the invoice without discount.
- 3.2 In case of payment extensions or delayed payments, we are entitled to charge interest fees of 8% above the basis interest rate from due date. We reserve the right to substantiate and enforce higher damages caused by the delay.
- 3.3 The buyer shall only be entitled to retention rights or counter-claims as far as the counterclaim is legally established or acknowledged by us.

4. TERMS OF DELIVERY AND DELIVERY DATES

- 4.1 Terms and dates of delivery are only binding if confirmed by us. The delivery term starts at the time of the order confirmation but not before the submission of any required documents or releases, and not before having received the down payment agreed upon or having settled all commercial and technical details among the contractual parties.
- 4.2 The observance of delivery dates requires the due fulfilment of buyer's obligations in time and is subject to the correct and timely delivery of our suppliers. This applies only in case we are not responsible for the no delivery. We shall inform the buyer as soon as possible should delays be foreseeable.
- 4.3 Delivery terms and delivery dates shall be reasonably extended in case of Force Majeure or other unforeseeable events that are beyond our control, this includes strikes, lock outs, delays in the supply of energies, transport or traffic problems as far as such events substantially impair the execution of our performance.
- 4.4 Partial deliveries are allowed to a reasonable extent.
- 4.5 The delivery term is met if the goods are dispatched on expiration of the delivery term, or the readiness for dispatch is signalled to the buyer. If goods need to be accepted, the date of acceptance will apply, or if acceptance is refused with rightful reason, the notice of readiness for acceptance will be sufficient.

5. PASSING OF RISK, ACCEPTANCE, DELAY IN ACCEPTANCE

- 5.1 The risk in the goods shall pass on to the buyer at the time the shipment has left our work; this applies also to partial deliveries, or if we bear the shipping costs or the delivery and mounting of the goods.
- 5.2 The acceptance of the goods is decisive for the passing of risk. The acceptance must take place at the scheduled date, or after our notice of readiness for acceptance. The buyer shall not be entitled to refuse the acceptance in case of a slight defect.
- 5.3 Should the dispatch or the acceptance of the goods be delayed or made impossible due to circumstances for which we are not responsible, the risk shall pass on to the buyer at the date of sending the notice of dispatch or readiness. We are entitled and, on request of the buyer, obliged to insure the goods against all reasonable risks at buyer's cost.
- 5.4 Should the acceptance be delayed by the buyer, or if the buyer refrains from any participation, or if the acceptance is delayed by other reasons in the responsibility of the buyer, we shall be entitled to ask for damages resulting thereof including additional expenditure (e. g. storage cost). In this case we shall charge a lumpsum payment of 0.5 % of the invoice amount for each calendar week, with a maximum of total 5% of the invoice amount, beginning at the delivery date or, if no delivery date is fixed, at the date of the notice informing on the readiness for shipment. The proof of higher damages and our legal claims (specially replacement and additional expenditures, reasonable indemnification, notice of termination) will not be impaired; the lump-sum will, however, be deducted from any outstanding payments. The buyer will be entitled to give proof, that our damage was not existent, or insignificant or considerably lower than the requested amount.

6. RETENTION OF TITLE

- 6.1 The delivered goods shall remain our property up to the full settlement of all claims arising from the sales contract and from the current business relation.
- 6.2 The buyer shall be entitled to sell and process the objects of our delivery in usual business trade, but shall not be entitled to pledge the goods or to deposit the goods by way of security. The buyer shall inform us immediately on any seizure of the goods or any other impairment of our rights by third parties. In case of danger, the buyer shall take all necessary steps to protect our rights.
- 6.3 Should the buyer resell the delivered goods in any form, the buyer shall already now assign to us all his claims against his customers to the amount of our invoice or to the amount of our joint property according to 6.4. We accept the assignment. Due to the assignment, the buyer will be entitled to collect the debts. We re-serve the right to collect the debts ourselves in case the buyer does not meet its payment obligations towards our company and is in default. In this case we will be entitled to ask the buyer to inform us on the assigned receivables and the debtors, and to submit us all documents required for collection. The buyer will inform the debtors (third parties) on this assignment.
- 6.4 The treatment and processing, mixing or connecting of our de-livered goods will always be done in our name and by our order. Should our goods be processed together with foreign products, we shall acquire the joint property in the new product in proportion to the value of our product. This also applies if our products are mixed or connected to products of other proprietors.
- 6.6 The buyer agrees to inform us immediately on any access to the delivered goods by third parties, as, e. g. distraint, as well as on damage or destruction. The buyer shall also inform us immediately on any ownership change of the objects of our delivery or the change of buyer's business location.
- 6.7 We are entitled to withdraw from the contract and to ask dam-ages instead of fulfilment in case the buyer acts contrary to the contract and specially in case of delayed payment or breach of his obligations according to the above items 6.5 and 6.6.
- 6.8 The filing of a petition in bankruptcy against the buyer entitles us to withdraw from the agreement and claim the immediate return of the delivered goods.

7. WARRANTIES

- Our warranty covers all material and title defects of the delivered goods, excluding all supplemental claims – subject to item 8 "Liability" – as follows.
- 7.1 At our discretion, we shall repair or replace at no cost for the buyer all parts proving to be defective due to circumstances occurred before the passing of risk. The buyer must immediately in-form us when such defects are stated. Replaced parts pass into our property. At our discretion, the retouch shall take place in our works. On customer's request, the retouch can also take place on site. In this case, the working hours on site and the cost of the faulty parts will not be charged. Travel expenses, travel times and additional travel expenses shall, however, be paid by the customer.

- 7.2 The buyer must provide us with the opportunity and sufficient time for making the repairs or replacement deliveries. If no agreement is reached, we shall not be liable for the consequences arising thereof. Only in urgent cases of operational safety hazard or to avoid excessive damages, the buyer shall be entitled to repair or have repaired the defects and charge the expenses to our account. In such cases the buyer shall inform us immediately.
- 7.3 Within the scope of legal regulations, the buyer shall be entitled to withdraw from the agreement in case we shall not meet a dead-line reasonably agreed for the retouch or replacement of an object showing a material defect, as long as this noncompliance is not due to such exceptional circumstances permitted by law. In case of a slight defect, the buyer shall only be entitled to a reduction of payment. This entitlement can't be applied on any other claim. For further claims see item 8. "Liability".
- 7.4 Our warranty does not cover the following cases: no nob service of our Operating Manuals, inappropriate or improper use, overstraining, wrong assembly or commissioning by the buyer or third parties, normal wear, incorrect or careless handling, irregular maintenance, inappropriate working material, unqualified construction work, unsuitable building ground, chemical, electro chemical or electrical influences, as long as we are not responsible for them.
- 7.5 In case of unqualified retouching work or repairs made by the buyer or by third parties, we shall not be responsible for the consequences thereof. The same applies to modifications of the delivered goods or other interventions made without our prior agreement.
- 7.6 Should the use of the object of the delivery injure industrial rights or copyrights protected in the country, we shall generally, at our cost, acquire the rights for the further use of the object by the buyer or modify the object of the delivery in a manner acceptable for the buyer, avoiding thus the further infringement of the industrial rights. Should this not be possible at economic terms or within areas on able time, the buyer shall be entitled to withdraw from the agreement. On the abovementioned circumstances, we shall also be entitled to withdraw from the agreement. In addition to this, we shall indemnify the buyer in case of uncontested or finally decided claims enforced by the proprietors of the industrial rights.
- 7.7 Our obligations mentioned in the above paragraph 7.6. are final, subject to item 8. "Liability", with regard to the infringement of industrial rights or copyrights. Our obligations shall only apply if:
 - the buyer informs us immediately on any infringements of claimed industrial or copyrights,
 - the buyer assists us sufficiently in defending the claims or agrees to the modification measures according to paragraph 7.6 above,
 - the failure of title is not due to an instruction of the buyer or to a production drawing submitted by the buyer, and
 - the infringement is not caused by an arbitrary modification of the delivered object or by a use which is not in conformity with the contract.

8. LIABILITY

- 8.1 Should, due to our negligence, the buyer not be able to use the delivered object according to the contract because of the omitted or defective realisation of proposals or advice made or given before or after the signing of the contract, or because of the infringement of other accessory obligations – specially instructions for operation and maintenance of the delivered object then the settlements according to paragraph 7 "Warranty" and 8.2 shall apply excluding any further claim.
- 8.2 Regardless of the legal consideration, our responsibility for dam-ages not caused to the delivered object itself, shall be limited to
 - intention,
 - gross negligence of proprietor, institutions or executives,
 - constructive injury of life, body, health,
 - defects fraudulently concealed by us, or the non-existence of which we have warranted,
 - defects of the delivered object as far as the liability for personal and material damage to privately used objects as covered by the product liability law.In case of constructive infringement of substantial contractual obligations, we shall also be responsible for gross negligence of non-executive employees and slight negligence, in the latter case our liability is limited to damages which are – in consideration of the kind of performance and delivery – typical for the contract and are normally foreseeable. No further claims shall be admitted.

9. STATUTORY LIMITATION

All claims advanced by the buyer shall be barred 12 months after delivery regardless of their titles. The statutory limitation periods shall apply to damage claims advanced by the buyer due to intention, fraudulent behaviour, gross negligence, and constructive injury of life, body, health, and as far as a liability is provided for privately used objects (paragraph 8.2) by the product liability law.

10. CONCLUSION, APPLICABLE LAW, COMPETENCY OF COURT

- 10.1 The business relations shall be exclusively ruled, governed and interpreted according to the laws of the Federal Republic of Germany to the exclusion of the laws covering the international purchase of movable goods even if the buyer has its business place abroad.
- 10.2 Place of fulfilment of all obligations of the parties hereunder is Zürich/ Switzerland.
- 10.3 The exclusive and also international competency of court for all contestations arising out of or in connection with the delivery is our business place in CH-8604 Volketswil, Switzerland. We shall also be entitled to apply the law being in force at the competent court at the business place of the buyer.
- 10.4 Should one or more of the provisions of the contract, including these general Terms and Conditions, be or become ineffective, the validity of the remaining provisions shall not be affected. The completely or partly ineffective provision shall be replaced by a provision that accomplishes, to the extent possible, the commercial purpose of the ineffective provision.

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