

# GENERAL TERMS AND CONDITIONS OF SALE FOR USE VIS-À-VIS US COMPANIES

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Datum  
1. Mai 2017

Ersteller  
AF

Bereich / Abteilung  
Armaturenfabrik

## 1. General, Scope

- 1.1. Deliveries, services and quotations shall take place exclusively subject to these Terms and Conditions of Sale. The following Terms and Conditions shall apply to all future business relationships, even if they are not expressly agreed again. We shall not acknowledge conflicting terms and conditions or terms and conditions that deviate from our Terms and Conditions of Sale, unless we have expressly agreed to their validity in writing.
- 1.2. Our Terms and Conditions of Sale shall apply even if we are making the delivery to the Customer without reservations, in the knowledge that the Customer has terms and conditions which conflict with or deviate from our Terms and Conditions of Sale.
- 1.3. The law of the Federal Republic of Germany shall apply to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

## 2. Conclusion and Contents of the Contract

- 2.1. Catalogues, printed materials and price lists shall not constitute a quotation.
- 2.2. Our quotations shall be subject to change until their acceptance by the Customer. Our prices are based on the actual stainless steel prices. Provided that there is no fixed-price agreement, all prices shall be subject to appropriate market adjustments. This refers to all raw material price changes on or after the day of placing orders with a delivery time of 60 days or more.
- 2.3. Our written order confirmation shall be decisive for the content and scope of the agreement made. Verbal subsidiary agreements or verbal undertakings which go beyond the contents of the written contract shall not apply.
- 2.4. Business that our representatives have transacted requires the confirmation of the head office.

## 3. Prices, Terms of Payment

- 3.1. The prices are quoted "ex works", excluding packaging, transport and ancillary costs, plus the applicable statutory VAT.
- 3.2. The Customer undertakes to pay the contractually agreed amount, net, within fourteen days of the receipt of the invoice, by transfer to one of our specified accounts.
- 3.3. In the event that the payment deadline is missed, the Customer shall be in default without any special reminder being sent. In this case, we – irrespective of other statutory claims – shall be entitled to demand default interest to an amount of 9% above the respective basic interest rate of the European Central Bank per annum, without a reminder being necessary. If we can prove that the damages caused by the default are higher, we shall be entitled to assert a claim for these.
- 3.4. The Customer may only offset against our claims or exert a right of retention if its claim is acknowledged by us or if it is legally established. It can also offset against counterclaims that are ready for a decision and such counterclaims that are based on the same contractual relationship.
- 3.5. In the event of a default of payment, our claims arising from the entire business relationship shall be due, provided that no other pleas of the Customer conflict with these. In this case, we shall be entitled to demand advance payment.

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## 4. Delivery Period, Delay in Delivery

- 4.1. The start of the delivery period indicated by us shall require the clarification of all technical issues, the punctual receipt of all the documents to be procured from the Customer, such as official approvals and permits, as well as the punctual provision of any down payment that has been agreed or the opening of an agreed letter of credit. The delayed performance of the Customer's payment obligations shall effect a corresponding extension of the delivery date.
- 4.2. Insofar as an export licence is necessary for the delivery and this is not available in spite of a proper application in good time for the planned delivery date, the delivery date shall be extended until the export licence is granted. No claims for compensation can arise as a result.
- 4.3. The delivery period shall be observed if the delivery item has left the plant or its readiness for dispatch has been communicated before its expiry. Part deliveries shall be permissible, unless they have been expressly excluded.
- 4.4. The delivery periods indicated in the contract shall be extended appropriately in the event of the non-adherence to the periods as a consequence of strikes, operational disruptions (including shortages of raw materials and power failures), lockouts, war, acts of terror, embargoes, virus attacks and other attacks by third parties on our IT system, insofar as these have taken place in spite of adherence to the usual care in the safeguards, and in other cases of force majeure. In these cases, we shall be entitled to withdraw from the contract without any claims for compensation against us arising for the Customer.
- 4.5 If we have not delivered during an agreed or extended delivery period, the Customer shall be entitled, after a reasonable grace period of at least 30 days, to withdraw from the contract with a written declaration.
- 4.6. The Customer is obliged, at our request, to declare within a reasonable period, whether it is withdrawing from the contract on account of the delay in delivery, or insisting on the delivery.
- 4.7. Claims for compensation on the part of the Customer on account of a delayed delivery shall be excluded, unless there is mandatory liability in cases of wilful intent or gross negligence on the part of our representatives or vicarious agents or the infringement of essential contractual obligations; a change in the burden of proof to the Customer's disadvantage shall not be associated with this.
- 4.8. If dispatch or delivery is delayed at the request or through the fault of the Customer, the latter may be charged the costs arising from the storage, in the event of storage at the Supplier's plant, but no less than 0.5 % of the invoice amount for each month, starting one month after the notification of readiness for dispatch. The Parties shall remain at liberty to prove higher or lower storage costs.
- 4.9. If the Customer is in default of acceptance or if it infringes other cooperation obligations, we shall be entitled to demand the damages we have incurred, including any additional expenditure. In this case, the risk of the accidental loss or accidental deterioration of the purchased item shall be transferred to the Customer at the time at which the latter falls into default of acceptance.
- 4.10. If payment obligations of the Customer are delayed by more than three months, we shall be entitled to withdraw from the contract. Payments that have been made shall then be offset against the costs incurred by us.
- 4.11. If, after conclusion of the contract, it becomes apparent that the financial capacity of the Customer has fallen substantially, we can suspend the further execution of the contract until the Customer has effected its performance in full or provided a bank guarantee or a comparable security, at our discretion. The same shall apply if the Customer has repeatedly and/or significantly fallen into default with its payments. If the Customer does not comply with such a request, we may withdraw from the contract.

## 5. Dispatch, Transfer of Risk and Insurance

- 5.1. If no regulation according to INCOTERMS has been agreed, the risk shall be transferred to the Customer at the time and to the extent that the product or parts thereof leave our site or that the communication of the readiness for dispatch to the Customer. This shall also apply for deliveries that are undertaken by our employees, for deliveries that take place carriage-paid and without packaging costs, as well as in cases in which installation, assembly or other services are performed by us.
- 5.2. Insofar as part of the product cannot be delivered on the basis of a default of acceptance on the part of the Customer, after completion and the communication of the readiness for dispatch, we shall fulfil our performance obligation through the storage of the product. In this case, the Customer is obliged to take on all the costs that we incur after the invoices are sent. We shall inform the Customer of the storage of the product immediately in writing. Statutory claims for compensation shall remain unaffected by this. In this case, the risk of the accidental loss or accidental deterioration of the product shall be transferred to the Customer at the time at which the latter has fallen into default of acceptance.

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5.3. At the request and at the expense of the Customer, the consignment shall be insured against the risks designated by him. We shall be entitled to take out a transport insurance policy at the Customer's expense.

5.4. The Customer hereby assigns its claims against the insurance company in the event of a claim to us. It is obliged to do everything to preserve the insurance claim, especially to submit the necessary reports and documents to us in good time.

## **6. Copyright and Ownership of Documents**

6.1. We shall reserve our copyrights, even after the fulfilment of the contract. The provided software and documents (drawings, declarations, cost estimates etc.) may not be made accessible to third parties. They must be returned to us at our request. They shall remain our property. The right of use shall be restricted to the Customer or the contractually agreed user. The copyright shall remain unaffected by this.

## **7. Retention of Title**

7.1. All items delivered by us shall remain our property in all respects until the payment in full of all our receivables arising from the business relationship.

7.2. In the event of conduct on the part of the Customer that is contrary to the contract, in particular in the event of a default of payment, we shall be entitled to withdraw from the contract and demand the return of the delivered items.

7.3. The Customer is obliged to handle the delivery item with care and to adequately insure it at the item's replacement value its own expense. The Customer must perform the necessary maintenance and inspection work at its own expense in good time.

7.4. The Customer may, subject to revocation, process the delivered items at any time in the regular course of business or combine them with other systems. The course of business shall no longer be deemed "regular" if the Customer's operations are encumbered by chattel mortgages, interruptions in payment, distraints, or protests against cheques or bills of exchange.

7.5. The Customer shall be entitled to sell on items delivered by us in the regular course of business. In this case, it hereby assigns its claims arising from the resale to us to the following extent:

7.5.1. If the goods belong to us alone, the full receivable shall be assigned to us.

7.5.2. If we are only entitled to co-ownership, the part of the receivable that corresponds to our share of co-ownership shall be assigned to us. The Customer shall be entitled to collect the assigned receivables, as long as it satisfies its payment obligations.

7.5.3. After the assignment, the Customer shall be authorised to collect the receivables from its end customers. We reserve the right to collect the receivables ourselves, as soon as the Customer does not properly comply with its payment obligations to us and falls into default of payment. In this case, the Customer is obliged to give the end customer notice of the assignment.

7.6. If items delivered by us are distrained, the Customer is obliged to inform us of this in writing immediately. We undertake to release the securities to which we are entitled on the request of the Customer, provided that their realisable value does not exceed that of the receivables to be secured by more than 10%; we shall be entitled to choose the securities to be released.

## **8. Liability for Defects**

8.1. Rights of the Customer arising from the liability for defects assume that the latter properly fulfils its examination and notification obligation in accordance with Section 377 German Commercial Code. If the Customer does not report an apparent defect within three working days, the delivery shall be deemed approved.

8.2. In the event of the punctual and justified reporting of defects by the Customer, we shall, at our own discretion, repair or replace all the defective parts. Replaced parts must be returned to us. In the event of the rectification of the defect, we are obliged to bear all the expense that is necessary for the purpose of the rectification of the defect, in particular transport, infrastructure, labour and material costs, provided that these are not increased as a result of the delivery item being brought to a location other than the place of performance. If a repair or a replacement delivery is not possible or is refused or is delayed beyond a reasonable period, or fails for other reasons for which we are responsible, the Customer may, at its own discretion, withdraw from the contract or reduce the purchase price.

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- 8.3. The Customer must provide us with the necessary time and opportunity to undertake all the repairs that seem necessary to us, at our discretion; otherwise, we shall be released from the liability for defects.
- 8.4. We shall provide no guarantee for damages which have arisen as a result of natural wear, unsuitable or improper use or handling, excessive strain, faulty installation or commissioning by the Customer or third parties.
- 8.5. Further claims of the Customer, especially for compensation in lieu of performance, for reimbursement of expenses and for compensation for direct or indirect damages, including arising from culpa in contrahendo, shall be excluded, unless there is wilful intent or gross negligence on the part of our legal representatives or vicarious agents, or liability is mandatory on account of the assumption of a guarantee for the condition of our products or on account of a culpable infringement of obligations which has led to the loss of life or to bodily injury or damage to health, or on account of the culpable infringement of essential contractual obligations. The compensation for damages for the infringement of essential contractual obligations must, however, be restricted to the foreseeable damages typical of the contract, except in cases of wilful intent or gross negligence. A change of the burden of proof to the disadvantage of the Customer shall not be associated with the above provisions.
- 8.6. The provisions under 8.5. shall apply accordingly for direct claims of the Customer against our legal representatives or vicarious agents.
- 8.7. All the Customer's claims for defects, including the claims for compensation and for the reimbursement of expenses regulated in 8.5. and 8.6. shall lapse one year after the delivery of the goods to the Customer.

## 9. Safety Conditions

- 9.1. Dangerous working materials: the Customer is obliged to fully and truthfully complete the questionnaire sent to it about the condition of the materials that arrive for processing.
- 9.2. The delivered machines and systems comply with the relevant generally recognised rules of technology, in accordance with the German Product Safety Act (ProdSG of 8th November 2011 (Federal Law Gazette I p. 2179, corr. 2012 I p. 131)).
- 9.3. If the safety equipment offered, such as tamperproof inlet and outlet elements, electrical equipment etc., are not included in the delivery (special production), the Customer must ensure that safety is guaranteed in another way.
- 9.4. The Customer is obliged to observe the safety instructions and information in our operating regulations and other regulations.
- 9.5. In the event of the sale of spare parts, the Customer is obliged to observe the safety instructions and information in our operating regulations and other regulations during the installation of the spare and wear parts.

## 10. Liability

- 10.1. If the delivery item cannot be used by the Customer in accordance with the contract through our fault, as a consequence of the omitted or deficient implementation of proposals made and advice given before or after the conclusion of the contract or due to the infringement of other secondary contractual obligations – in particular misleading instructions for the installation, operation and maintenance of the delivery item – the provisions of Section 8, as well as 10.2. below, shall apply to the exclusion of any further claims of the Customer. We shall not be responsible for damages which may occur if and insofar as the Customer has not followed our instructions and warnings. The Customer agrees to indemnify us against all claims, cases of liability and claims for compensation which may arise from this.
- 10.2. For damages which have not occurred on the delivery item and are not covered by our liability for defects under Section 8, we shall only be liable – irrespective of the legal basis – in the event of wilful intent, in the event of the gross negligence of the owner / corporate bodies or executives, in the event of defects to the delivery item, insofar as we have mandatory liability for personal injury and material damage to privately used items in accordance with the German Product Liability Act.
- In the event of the culpable infringement of essential contractual obligations, we shall also be liable in the event of the gross liability of non-executive employees and in the event of slight negligence, in the latter case restricted to the sensibly foreseeable damage that is typical for the contract.
- 10.3. Further claims shall be excluded.
- 10.4. Insofar as our liability is excluded or restricted, this shall also apply for the personal liability of our employees, representatives and vicarious agents.

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## 11. Final Provisions, Place of Jurisdiction

11.1. If a provision of the present Terms and Conditions of Sale is or becomes invalid, the validity of the remaining provisions shall not be affected by this.

11.2. The contract, any amendment or addition to the contract and other agreements must be in writing in order to be valid. The Customer may not assign claims and other contractual rights to third parties without our written consent.

11.3. Unless otherwise indicated in our order confirmation, the place of performance for delivery and payment shall be Biberach/Riss, Germany.

11.4. All disputes that arise from or in connection with the present contract shall be finally resolved according to the Rules of Arbitration of the International Chamber of Commerce in the version valid at the time of the arbitration proceedings, without recourse to the ordinary courts of law, by one or more arbitrators appointed in accordance with these Rules of Arbitration. The court of arbitration can also make a binding decision about the validity of this arbitration agreement. The place of arbitration shall be Zurich.

German law shall apply to all claims in connection with the contract to the exclusion of CISG (UN Convention on Contracts for the International Sale of Goods). In addition to the rules of the ICC and the other binding regulations, German law shall apply to the arbitration proceedings to the exclusion of the CISG (UN Convention on Contracts for the International Sale of Goods).

The language of the arbitration proceedings shall be English.

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Date                      Signature of Customer

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