

## General Terms and Conditions of Delivery and Assembly

### § 1 Scope of Application

- 1.1 Our terms and conditions shall apply exclusively; we do not recognise any terms and conditions of the customer which conflict with or deviate from our terms and conditions unless we have expressly agreed to their validity in writing. Our terms and conditions shall also apply even if we carry out a delivery without reservation in the knowledge that the customer's terms and conditions conflict with or deviate from our terms and conditions.
- 1.2 Our terms and conditions of delivery and assembly shall only apply towards entrepreneurs within the meaning of § 310 BGB.
- 1.3 Our terms and conditions shall apply in their respective version as a framework agreement also for all future transactions of the same kind with the customer, without us having to refer to them again in each individual case; in this case, we shall inform the customer of any changes at the latest upon conclusion of the respective contract.

### § 2 Offer – Prices – Terms of Payment

- 2.1 Our offers are subject to change without notice and non-binding, unless the offer by way of exception expressly indicates our intent to be bound.
- 2.2 Our prices are without the statutory value added tax and for delivery ex works ("ex works", Incoterm 2020) Zum Welplager Moor 8, D-49163 Bohmte-Hunteburg, Federal Republic of Germany.
- 2.3 Unless otherwise contractually agreed, the payment term is 14 days net. Any agreed cash discount deduction on new invoices is inadmissible if older due invoices have not yet been settled. The day on which we can dispose of the receipt of money in terms of value shall be deemed the day of payment. If down payments or advance payments have been agreed, the statutory value added tax shall be added to the down payment or advance payment amount.
- 2.4 It may be agreed between the parties that the customer must provide a documentary letter of credit through his bank (or any other bank acceptable to us). In this case, it is agreed that the letter of credit will be made in accordance with the General Guidelines and Practices for Documentary Credits, Revision 2007, ICC Publication No. 600 ("ERA").
- 2.5 The customer only is entitled to set-off and retention rights if his counterclaims have been legally established, are undisputed or acknowledged by us or if a counterclaim resulting from the contractual relationship is affected, in particular in the case of a counterclaim which has arisen from a claim for payment in kind which entitles the customer to refuse performance. The customer is only entitled to exercise a right of retention insofar as his counterclaim is based on the same contractual relationship.
- 2.6 Subsequent amendments or additions to the contract or the essential results of the order must be recorded in writing and confirmed by both parties. In cases in which we provide services for which no fixed price has been agreed,

the price shall be determined by us using our standard billing rates valid at the time the services are provided. Furthermore, we may invoice all costs incurred, including a reasonable additional charge. We will document the additional price on request.

### § 3 Delivery and Execution

- 3.1 Compliance with all our delivery and execution obligations requires the timely and proper fulfilment of the customer's obligations and the clarification of all technical questions.
- 3.2 The plant or the delivery items will be shipped by the most favourable dispatch route and at the risk and expense of the customer. If the customer so wishes, we will cover the delivery with transport insurance. The costs incurred for said insurance are to be borne by the customer.
- 3.3 Partial deliveries are permitted if the customer does not incur any significant additional work or additional costs as a result (unless we agree to bear these costs).
- 3.4 Customary deviations of the delivery item from the contractual agreements, offers, samples, leaflets, data sheets, trial and preliminary deliveries are permitted in accordance with the respectively valid DIN/EN standards or other relevant technical standards.
- 3.5 Delivery items from properly made deliveries can only be returned if we authorise the return. In this case the customer will bear the costs of the return shipment.
- 3.6 Force majeure, governmental requirements and other circumstances for which we are not responsible, in particular traffic and operational disruptions, industrial disputes, shortage of materials, fire damage, war or a state of emergency will release us from the obligation to deliver and perform for the duration of their effects. We are entitled to withdraw from the contract if we can no longer be reasonably expected to fulfil the contract for the reasons stated above. Unacceptability does not exist if the obstacle to performance, which exists for the above-mentioned reasons, is foreseeable and only temporary in nature. Compensation for damages against us is excluded in these cases.
  - 3.6.1 We shall be liable for impossibility of performance as well as for delay in performance, insofar as this is due to intent or gross negligence, including intent or gross negligence of our representatives or vicarious agents, in accordance with the statutory provisions. In cases of gross negligence, our liability is limited to the foreseeable damage typical for the contract.
  - 3.6.2 In the event of slight negligence, our liability for impossibility of performance is also limited to damages and compensation for futile expenditure to the foreseeable damage typical for the contract. Any further claims of the customer due to impossibility of performance are excluded. The right of the customer to withdraw from the contract remains unaffected.
  - 3.6.3 Our liability due to delay of performance is limited in the case of slight negligence to a total of 10% of the value of

the performance for damages in addition to performance and to a total of 10% of the value of the performance for damages in lieu of performance. Any further claims of the customer due to delay in performance are excluded - even after expiry of a deadline set for us to perform. These provisions also apply to the reimbursement of futile expenses.

3.6.4 The limitations of Section 3.6 do not apply in cases of culpable injury to life, body or health or due to the violation of essential contractual obligations. Material contractual obligations are those whose fulfilment characterises the contract and on which the client may rely. A change in the burden of proof to the disadvantage of the customer is not connected with the above regulations.

#### § 4 Requirement of self-delivery

We do not assume the procurement risk. If, despite the conclusion of a corresponding purchase contract on our part, we do not receive the delivery item or do not receive it in full with regard to essential parts of the delivery item, we are entitled to withdraw from the contract with the customer. Our liability for intent and negligence remains unaffected. We will inform the customer immediately about the unavailability or the untimely availability of the delivery item and, if we want to withdraw, we will exercise this right. In the event of withdrawal, we shall immediately reimburse any payment already made by the customer.

#### § 5 Due Date – Interest – Consequences of Default

5.1 If payment is made after the agreed payment period of 14 days, interest for default is to be paid to us at the rate provided by law.

5.2 As long as the customer is in default of payment, we are not obliged to make further deliveries, regardless of the legal grounds on which our delivery obligation is based.

5.3 If a significant deterioration in the financial circumstances of the customer occurs, in particular if the opening of insolvency proceedings is applied for, we can demand cash payment or other security before delivery of the delivery item for any outstanding deliveries under discontinuation of the payment period.

5.4 If we should have agreed upon installment payments and/or payments on account with the customer, the following shall also apply: If the customer is more than three days in default with the payment of an instalment or an instalment in whole or in part, the outstanding amount is due immediately and in full at once.

5.5 If security for payment of the remuneration has been provided by a bank or other third party and delivery of the delivery item cannot take place due to circumstances for which we are not responsible, we shall also be entitled to demand the total outstanding residual price from the bank or other third party on presentation of proof that the delivery item has been stored. Such storage shall be at the expense and risk of the customer. The date on which the delivery item is stored by us shall be deemed the delivery date. All delivery documents and other documents which must be handed over by us in order to receive payment from a bank or other third party must be handed over to us immediately by the issuer of these documents.

#### § 6 Reservation of Property Rights

6.1 We reserve property rights to the delivery item or system until all claims against the customer to which we are entitled from the business relationship have been satisfied. In the event that the customer acts in breach of contract, in particular in the event of default in payment, we are entitled to withdraw from the contract after the unsuccessful expiry of a reasonable deadline. After possible withdrawal from the contract, we have the right to demand return of the delivery item, to sell it elsewhere or to dispose of it in any other way.

6.2 The customer is obliged to treat the delivery item with care; in particular, he is obliged to insure it sufficiently at his own expense against fire, water and theft damage at its new value. If maintenance and inspection work is required, the customer must carry out such work in good time at his own expense.

6.3 In the event of seizure or other interventions by third parties, the customer must inform us immediately in writing so that we can take legal action in accordance with § 771 ZPO (German Code of Civil Procedure). If the lawsuit pursuant to § 771 ZPO was successful and if the execution at the third party to cover the court and out-of-court costs of such a lawsuit was unsuccessful, the customer shall be liable for the loss we incurred.

6.4 The processing or transformation of the delivery item by the customer is always carried out on our behalf. If the delivery item is processed with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of the delivery item (final invoice amount including VAT) to the other processed items at the time of processing. The same applies to the object resulting from processing as to the delivery item delivered under reservation.

6.5 If the delivery item is inseparably mixed with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of the delivery item (final invoice amount including VAT) to the other mixed items at the time of mixing. If the mixing is carried out in such a way that the object of the customer is to be regarded as the main object, it is deemed to be agreed that the customer shall transfer proportional co-ownership to us. The customer shall hold the sole ownership or co-ownership thus created in safekeeping for us.

6.6 The customer also assigns to us the claims to secure our claims against him which arise against a third party through the connection of the delivery item with real estate property.

6.7 We undertake to release the securities to which we are entitled at the request of the customer to the extent that the realisable value of our securities exceeds the claims to be secured by more than 10%. The selection of the securities to be released is at our discretion.

#### § 7 Liability for Defects

7.1 Claims for defects require that the customer has properly fulfilled his obligations to inspect and notify defects in accordance with § 377 HGB (German Commercial Code).

7.2 We assume no liability for used machines.

- 7.3 Weights, measures, performance data, yields and other data mentioned in sales brochures, advertisements and comparable documents are to be regarded as indications only. The same applies to test systems or demonstration systems that have been demonstrated or made available.
- 7.4 If there is a defect in the delivery item for which we are responsible, we shall be entitled, at our discretion, to supplementary performance in the form of rectification of the defect or delivery of a new item free of defects. In the case of rectification of the defect, we are obliged to bear all expenses necessary for the purpose of rectifying the defect, in particular transport, travel, labour and material costs, provided that these are not increased by the fact that the delivery item has been taken to a place other than the place of performance.
- 7.5 If the supplementary performance fails, which is to be assumed at the earliest after the second attempt of rectification or supplementary performance, the customer shall be entitled to demand withdrawal or reduction at his discretion. Unless otherwise stated below (Sections 7.6, 7.7 and 7.8), further claims of the customer - for whatever legal reasons - are excluded. We shall therefore not be liable for damage which has not occurred to the delivery item itself; in particular, we shall not be liable for loss of production, interruption of operations, the costs of any recall campaign, loss of profit or other financial losses of the customer. The following also applies to foreign business transactions: In the event of disproportionate effort and disproportionate costs which would be incurred if we were to remedy the defect ourselves, we may in such cases require the customer to carry out the necessary repairs himself or have them carried out. We shall then reimburse the customer for the costs incurred by him in carrying out the necessary rectification work.
- 7.6 We shall be liable in accordance with the statutory provisions if the customer asserts claims for damages based on intent or gross negligence, including intent or gross negligence on the part of our representatives or vicarious agents. Insofar as we are not accused of intentional breach of contract, the liability for damages is, however, limited to the foreseeable, typically occurring damage
- 7.7 We shall be liable in accordance with the statutory provisions if we culpably violate an essential contractual obligation; essential contractual obligations are those whose fulfilment characterises the contract and on which the customer may rely. In this case, however, the liability for damages is limited to the foreseeable, typically occurring damage.
- 7.8 Liability for culpable injury to life, body or health shall remain unaffected; this shall also apply to mandatory liability under the Product Liability Act and in tort.
- § 8 [Installation – Commissioning – Maintenance and Services](#)
- 8.1 Unless otherwise agreed, the installation and assembly of the delivery items shall be carried out by the customer and at his risk.
- 8.2 In the event that we have assumed contractual responsibility for installation and assembly, the following applies:

- 8.2.1 The customer has to provide sufficient handling support and handling equipment, including cranes and forklifts, etc., for unloading and setting up the delivery items. The customer will also provide, in good time and at its own expense, qualified staff, oil, lubricants, water, steam, oxygen, electricity, air, drawings and data, raw materials and other items, preparatory work and services required for the installation and commissioning of the delivery items. This includes particularly:
- an appropriate working and storage area as close as possible to the place where the commissioning work is to be carried out;
  - the placement of the equipment in the installation area, which is in an appropriate condition to start the installation;
  - all necessary construction work, in particular concerning the subsoil, wiring, conduits, anchor bolts, floor gutters, frames, grids, cover plates, supports for supporting the conduits and wiring and for mounting overhead conveyors and installations on the roof structure;
  - supply, installation and connection of all necessary cables other than the equipment internal cables, including power cables, data cables, control and signal cables, etc. from the main control consoles and operation centres to and between the connection points on the various parts of the equipment according to our wiring diagrams, including shielded cable ducts or cable ties for power and data cables according to our specifications;
  - standard IT hardware and software as specified (if not included in the quotation);
  - Placing the main servers (if any) in a dry, clean, air-conditioned room with adequate telephone and data line connections to our supervisory staff and online service;
  - sork permits and other permits required in the country where the equipment is to be installed.
- 8.2.2 The customer has to prepare the premises for the installation at his own expense and in accordance with the contractual agreements and to ensure that the necessary power connections and technical equipment are available. The customer is solely responsible for the structural analysis. Prior to the start of the assembly work, the client will provide us with all necessary information on the location and the existence of supply connections, e.g. electricity, gas and water pipes and the like. facilities at our disposal. This applies in particular to concealed installations. We are not liable for damages that arise because the customer has not fulfilled his above obligation.
- 8.2.3 The installation site for the system must be freely accessible, a suitable hall crane must be available or the hall floor must be loadable with trucks or mobile cranes. The hall floor must be cleared in the area where the plant is to be set up.
- 8.2.4 Before the start of the installation of a plant, the supplied parts must be on site. Construction work and other preparatory work must be completed to the extent that installation can be started immediately upon arrival of the

fitter and carried out without interruption. New buildings must be dry, wall and ceiling plastering must be completed and windows and doors must be installed. The customer shall ensure that the foundation required for the specific nature of the system to be set up is of sufficient load-bearing capacity (concrete levelled with spirit level). Any measures for structure-borne sound insulation shall be arranged by the customer.

- 8.2.5 For the services of our technicians, we charge the respective current hourly rates (if necessary with overtime, weekend, holiday and night surcharges). For work on Sundays and public holidays, the surcharges customary in collective agreements shall apply. Accommodation costs, daily expenses, travel expenses and allowances for travel abroad shall be charged separately. For outward and return journeys a kilometre allowance and hourly rate shall be charged according to the current rate. The kilometre allowance shall be calculated by Bohmte-Hunteburg. The prices quoted do not include the statutory value added tax.
- 8.2.6 All additional parts required during assembly which are not expressly listed and which are necessary for commissioning due to unusual, unforeseeable local conditions or due to a special request of the customer or due to requirements of the local supervisory authority will be charged separately upon proof.
- 8.2.7 Interruptions in installation due to missing connections, construction work, power failures, etc. for which we are not responsible shall be borne by the customer, unless the customer is not responsible.
- 8.2.8 Additional work that is not part of the contractually agreed scope of delivery shall be charged according to time and effort. This will be agreed separately between us and the customer.
- 8.2.9 Any assembly lump sums agreed do not include work on Sundays and public holidays; assembly lump sums only apply if all preparatory measures have been completed by the customer.
- 8.2.10 All machines are provided with the operating instructions provided by the respective manufacturer. Costs for personal instruction are not included in the purchase price and will be charged according to the time spent in accordance with our installation rates.
- 8.2.11 The proper execution of the work commissioned must be confirmed to us by the customer on the assembly report. The customer will be given a copy for his documents.
- 8.2.12 Unless otherwise agreed in the contract, we shall not be liable for
- interfaces between our equipment and/or software on the one hand and elements provided by the customer or third parties on the other hand;
  - compatibility with other software of the customer;
  - coordination between our work and that of other suppliers.
- 8.2.13 Maintenance work is only carried out by us to the extent described in the contract or a special service contract. The provisions of the relevant service contract apply to the services
- 8.2.14 If the customer assumes the service work, in particular installation and commissioning, we are exempt from any

liability. In particular, we are not responsible for faulty execution by the customer that did not comply with our recommendations, drawings and specifications. Nor do our employees check whether all their instructions have been properly carried out by the client.

## § 9 State Regulations – Safety – Use

- 9.1 For individual parts of the plants we have taken into account the Machinery Directive 2006/42/EC, provided that the customer installs safety devices which are his responsibility according to the contract. However, we do not warrant that the systems will in each case comply with all locally applicable safety and occupational health and other local regulations, unless this has been expressly agreed in writing in the contract. If an inspection by the local (supervisory) authorities is required prior to commissioning of the installations, this is also the responsibility of the customer.
- 9.2 The customer shall ensure that our employees can perform their work safely without risk to their health.
- 9.3 The installations are only intended for use that is expressly described in the contract and in our manuals. We are not liable for any other use of the facilities, even if we are aware of such use.
- 9.4 In this respect, the customer shall indemnify us in respect of all claims by his employees, representatives or third parties for personal injury or damage to property caused directly or indirectly by the customer, his employees, representatives or other third parties' failure to comply with our safety, operating and/or maintenance instructions. This indemnification includes all costs incurred by us, including attorney's fees and expenses incurred by us.

## § 10 Additional Conditions for Software

- 10.1 We grant the customer the rights of use of the software to be transferred and other copyright-protected work results to the extent of the contractually intended purpose. Unless otherwise agreed, we thereby grant the customer a non-transferable, non-exclusive right of use, limited in time or in any other way, for the period of use or contract, for the installation of this software on a database and for the use of this software as embedded software or application software, depending on the case, in the manner described in the contract. The customer is not entitled to transfer the rights of use granted to him in whole or in part to third parties or to grant corresponding rights of use to third parties. We reserve the right to terminate this license if the provisions of the license are violated or if the customer violates the provisions of the underlying contract in any other way.
- 10.2 Insofar as the rights of use have only been transferred for a limited period of time or the transfer of the license ends for other reasons, all transferred rights shall revert to us without further legal action upon expiration of the license. The customer is obliged to delete all license products in his possession and to return the documentation.
- 10.3 The transfer of the source code to the customer is excluded, unless expressly agreed otherwise.

- 10.4 Insofar as we use the services and work results, in particular the rights of use of third parties for the execution of the order, we shall acquire their rights of use to the extent necessary for the execution of the order and transfer them to the customer. If it is not possible for us to acquire the rights of use to this extent, or if there are restrictions on the rights of use or other rights of third parties, we shall inform the customer accordingly.
- 10.5 The customer is entitled to make a copy of the software exclusively for backup purposes, which must be labelled as a copy and must bear a reference to us as the copyright holder.
- 10.6 The customer may not remove any copyright notices.
- 10.7 The customer hereby undertakes not to modify, decompile, reverse engineer (reengineer) or copy the software, except as expressly authorized in these General Terms and Conditions of Sale.
- 10.8 A separate maintenance and/or service and support agreement is required for maintenance and service measures on transferred software.
- 10.9 We will transfer the rights of use required for the use of our products and services to the extent described above to the client only after settlement of all claims for remuneration, fees and reimbursement of costs relating to the order.
- 10.10 In the event of loss of data, we are only liable for the expenditure that is necessary for the restoration of the data in the case of proper data backup by the client. In the case of slight negligence, we will only be liable if the customer has carried out a proper data backup immediately before the measure leading to the loss of data.
- 10.11 Our liability and warranty is excluded to the extent that damages and/or malfunctions are caused by the customer culpably violating the provisions of this contract, modifying the software supplied by us contrary to the contractual provisions or our instructions or not using the software supplied by us in the system environment agreed in the contract.
- 10.12 If we are obliged to deliver and transfer goods or software or to produce other works, such as expert opinions, analyses, etc., the provisions of § 7 shall apply accordingly to the defective delivery and performance.
- 10.13 The limitations of liability apply accordingly to personal claims against our employees, representatives and vicarious agents.
- § 11 **Intellectual and Industrial Property Rights, Confidentiality**
- 11.1 All intellectual property rights and industrial property rights relating to the products, cost estimates, drafts, drawings and other documents, such as patents, utility models, design patents, copyrights and trademark rights, shall remain with us. The customer undertakes not to assert any intellectual property rights and industrial property rights in the products and in modifications to the products.
- 11.2 Any further liability on the part of our company due to infringement of third party rights listed in clause 11.1 is excluded, except in cases of gross negligence or intent. Under no circumstances shall we be liable to third parties for claims based on the infringement of rights listed in clause 11.1 if the claims are in connection with illustrations, drawings, catalogues, specifications or other materials supplied to us by or on behalf of the customer.
- 11.3 Subject to the above limitations of liability, we shall defend the customer - against any claims arising from a violation of rights listed in Clause 11.1 through the contractual use of our products and shall assume any costs and damages imposed on the customer, provided that the customer has notified us of such claims in writing and without delay and that all defensive measures and settlement negotiations are reserved to us.
- 11.4 All information and documents supplied by us to the customer remain our property, may not be copied by the customer, may not be disclosed to third parties and may only be used for the agreed purposes. Drawings and other documents belonging to offers must be returned to us on request.
- 11.5 The customer undertakes not to observe, examine, dismantle or test the plant with the aim of obtaining our trade secrets.
- 11.6 Insofar as we have delivered items in accordance with drawings, models, samples or other documents provided by the customer, the customer shall guarantee that industrial property rights of third parties are not infringed. If third parties prohibit us from manufacturing and delivering such objects, in particular by invoking industrial property rights, we are entitled - without being obliged to examine the legal situation - to stop any further activity in this respect and to claim damages if the customer is at fault. The customer also undertakes to indemnify us immediately from all claims of third parties in connection therewith.
- § 12 **Exclusion of further Liability**
- 12.1 Any further liability for damages beyond that provided for in the above terms and conditions in detail is excluded, irrespective of the legal nature of the claim asserted. This applies in particular to claims for damages arising from culpa in contrahendo, other breaches of duty or tortious claims for compensation for property damage in accordance with § 823 BGB. In the event of a claim for damages due to culpa in contrahendo, the aforementioned exclusion of liability as a result of the claim already accrued at the time of conclusion of the contract shall be equivalent to a subsequent waiver of liability. In addition, we shall not be liable if a claim is asserted against the customer under the provisions of industrial property rights.
- 12.2 The limitation according to item 12.1 shall also apply if the customer demands compensation for useless expenses instead of a claim for compensation for the damage instead of performance.
- 12.3 Insofar as the liability for damages against us is excluded or limited, this shall also apply with regard to the personal liability for damages of our employees and workers, employee representatives and vicarious agents.
- § 13 **Limitation**
- Any claims of the customer against us - regardless of the legal basis - shall become statute-barred one year after they arise. This does not apply in the cases of §§ 438 para.

1 No. 2 and 634a para. 1 No. 2 BGB (German Civil Code). This shall also not apply in the case of intent or fraudulent concealment of a defect or if we have assumed a guarantee. Furthermore, this limitation period shall not apply to claims for damages in cases of injury to life, body or health or freedom, in the case of claims under the Product Liability Act or in the case of a grossly negligent breach of duty or the breach of essential contractual obligations. Material contractual obligations are those whose fulfilment characterises the contract and on which the client may rely. A change in the burden of proof to the disadvantage of the customer is not associated with the above provisions.

#### § 14 [Miscellaneous Provisions](#)

- 14.1 Place of jurisdiction shall be 49163 Bohmte-Hunteburg, Federal Republic of Germany. We have the right to sue at the court having jurisdiction for the customer or at any other court which may have jurisdiction under national or international law.
- 14.2 The place of performance is also 49163 Bohmte-Hunteburg, Federal Republic of Germany.
- 14.3 The customer is not permitted to transfer any guarantee and warranty rights and other rights granted to him within the scope of the contractual relationship with us, unless we have agreed to the transfer in writing.
- 14.4 If the customer sells the products to third parties or exports them, he undertakes to observe the import and export laws applicable to sales of this kind at all times.
- 14.5 The law of the Federal Republic of Germany applies.

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