

## Standard Terms and Conditions of Sale and Delivery

### 1. General provisions

- 1.1 In the absence of anything to the contrary agreed in writing, solely the following Terms and Conditions of Sale and Delivery shall apply to all goods and services which we supply. We shall not be bound by any other standard terms or conditions on the part of the buyer deviating from our own Standard Terms and Conditions of Sale and Delivery. These Standard Terms and Conditions of Sale and Delivery shall also apply notwithstanding the fact that we effect deliveries to the buyer without any reservations in spite of being aware of provisions in the buyer's terms and conditions which are contrary to or deviate from our own Standard Terms and Conditions of Sale and Delivery.
- 1.2 For the purposes of ongoing business relations, our Standard Terms and Conditions of Sale and Delivery shall also apply to future deliveries and services notwithstanding the fact that they may not have been expressly acknowledged.

### 2. Offers

- 2.1 Our offers are subject to change without notice and shall be construed as constituting an invitation to treat.
- 2.2 The disclosures on dimensions, weights, output and the like contained in catalogues, brochures, circulars, advertisements, diagrams, price lists and other documents shall be deemed to be approximate only and not binding unless we expressly agree to be bound by them.
- 2.3 We reserve the right to make any improvements or modifications to the product differing from the details specified in any offers or brochures provided that they do not adversely affect the purpose of the contract and are reasonably acceptable for the buyer.
- 2.4 Models, samples, drawings, plans, descriptions, calculations, offers and other documents shall remain our property and be subject to our copyright. They may not be disclosed to any third parties.

### 3. Conclusion of contract

- 3.1 The buyer agrees to be bound by its order for a period of four weeks starting with the date of which the order is sent.
- 3.2 A contract shall not be deemed to have arisen until we have confirmed the order in writing or execute the order, whichever comes first.
- 3.3 Ancillary agreements, modifications made orally or over the telephone or any additions to orders already confirmed shall be binding only if confirmed by us in writing.

### 4. Prices

- 4.1 Orders for which no prices have been agreed upon shall be executed in accordance with the list prices applicable on the day of delivery.
- 4.2 In the absence of anything to the contrary in the confirmation of order, our prices are quoted "ex works" or "ex warehouse" net of packaging, freight, any transport lock requested by the buyer, as well as assembly and operating materials, which shall be invoiced separately.
- 4.3 Our prices are quoted net of value added tax, which shall be itemised separately in the invoice at the statutory rate prevailing on the date of invoice.

### 5. Payment, default, netting of counterclaims

- 5.1 Means of payment other than cash or bank transfers shall be accepted only subject to prior agreement and even then only as conditional payment. If payment is made by cheque or bill of exchange, the payment obligation shall not be deemed to have been discharged until the cheque or bill of exchange has been duly honoured. Upon acceptance of a bill of exchange, payment shall be deemed to have been deferred only provided that this has been expressly agreed in writing. All interest, costs and taxes shall be for the buyer's account.
- 5.2 Discounts or rebates may only be applied if this has been agreed upon in writing. Cash discounts may only be taken if we receive all payments due under the order within the specified period.
- 5.3 In the absence of any agreement to the contrary, payment shall be due immediately upon delivery of the goods and receipt of the invoice or equivalent statement of payments due. In addition to the cases provided for by law, the buyer shall be deemed to be in default of payment if it fails to remit the amount owing within 30 days of such amount falling due for payment notwithstanding the absence of any reminder. In the case of any doubt as to whether or when the buyer received the invoice or statement of payments due, only the fact that it has received delivery of the goods bought shall be decisive. In the event of any default of payment, the purchase price shall be subject to interest at 8% above the base rate. This shall not prejudice our right to seek further remedies.
- 5.4 If the buyer is in default of collection of the goods by more than one month, we shall be entitled to recover the storage costs which we incur as a result of such default. If we store the goods in our own warehouse, the buyer shall be liable for the storage costs at the normal market rate which would be charged by a third party for storage.

- 5.5 If the buyer is in default of collection of the goods, the risk of loss of or damage to the purchased goods shall pass to the buyer upon default of acceptance or payment arising.

- 5.6 The buyer may not net any counterclaims or exert any right of retention or right to withhold performance. This shall not apply if such rights of netting or retention relate to counterclaims which are not disputed or which have been upheld in a court of law.

### 6. Delivery dates and periods, delays in delivery

- 6.1 The delivery periods shall commence upon receipt of the order, however no earlier than upon submission by the buyer of the necessary documents, approvals or releases and no earlier than upon remittance of any prepayment which may have been agreed upon.
- 6.2 The delivery period shall be reasonably extended in the event of any actions arising from industrial disputes, including but not limited to strikes and lockouts, as well as upon the occurrence of acts of God and unforeseeable hindrances which are beyond our control, to the extent that it can be proven that such hindrances exert a significant effect on the production and delivery of the goods to be supplied. This shall also apply if our own suppliers are afflicted by such events and hindrances.
- 6.3 If the circumstances referred to in Article 6.2 impair our operations to such an extent that execution of the order is rendered impossible, we may rescind the contract. In the event of any of the aforementioned circumstances occurring, we shall be additionally entitled to rescind the contract if the cost of executing the order is substantially out of proportion to the buyer's interest in having the order executed.
- 6.4 If the delivery period is exceeded, we shall not be deemed to be in default of delivery until the passage of a further period of 14 days. In the event that we are in default of delivery, the buyer shall have the following remedies:
- If as a result of default of delivery for reasons for which we are responsible the buyer may assert a claim for continued performance of the contract, we shall be liable for damages in accordance with Article 10 below and, otherwise, pursuant to the applicable statutory provisions.
  - The amount of entitlement to damages in the event of any default of delivery shall be limited to half a percent of the net purchase price per week of default or any part thereof, provided that this does not exceed 5% of the total net purchase price.
  - Otherwise, our liability shall be governed solely by Article 10 herein.

### 7. Dispatch and transfer of risk

- 7.1 In the absence of any express agreement to the contrary, we shall select the route, the method of dispatch and the forwarder at our own discretion. In this connection, we shall not be under any obligation to select the cheapest route and method of dispatch.
- 7.2 Risk shall pass to the buyer in accordance with the provisions applicable to sales to a destination in accordance with the buyer's instructions including in cases in which we are responsible for post-delivery assembly of the goods at the buyer's site. If dispatch is delayed due to circumstances for which the buyer is responsible, risk shall pass to the buyer as from the day on which the goods are declared to be ready for dispatch.

### 8. Warranty

- 8.1 We warrant that the goods supplied are free of any faults in their design, the materials used and workmanship in the light of current technical capabilities in accordance with the technical standards applicable in Germany.
- 8.2 No claims shall be accepted under this warranty in the following cases:
- Inappropriate or improper use;
  - Failure to observe the operating instructions;
  - Dismantling or modifications without our approval;
  - Improper positioning;
  - Use of parts other than original Sauer spare parts;
  - Natural wear and tear;
  - Unsuitable fuels;
  - Inadequate maintenance.
- 8.3 We shall be liable for parts of the machinery which we source from our own suppliers only to the extent that they grant us warranties of their own.

### 9. Liability for faults in the goods delivered

- 9.1 The buyer shall examine the goods supplied by us immediately after receipt and notify us of any visible faults within ten days. Similarly, the buyer shall report in writing any invisible faults immediately after discovery, however no later than within one week. In the absence of the receipt of any such written report, the goods shall be deemed to have been duly accepted.

- 9.2 In the event of any faults in the goods delivered, we shall repair or, at our discretion, replace all parts which exhibit faults or are materially impaired in their suitability for their intended purpose as a result of any circumstances arising prior to the transfer of risk between the day of delivery and a period of 12 months or 2,000 operating hours in the case of air-cooled compressors or 1,000 operating hours in the case of water-cooled compressors. Replaced parts shall become our property. If dispatch, assembly or start-up of the machinery is delayed for reasons beyond our control, liability shall expire no later than 12 months after the date on which risk passes. In the case of material externally sourced parts, our liability shall be confined to assigning to the buyer the rights accruing to us against the supplier of such externally sourced parts. We shall be deemed to have duly complied with our duty to supply replacements for faulty parts upon releasing the corresponding part for transportation (regardless of whether this is by ship, by rail, by air or by any other means) carriage paid to Hamburg, it being agreed that the buyer shall be responsible for onward transport, assembly/integration of the part and any other necessary actions.
- 9.3 Otherwise, the buyer shall only be entitled to rescind the contract or demand a reduction in price if repairs are not possible, several attempted repairs fail to produce the desired results or the repairs or replacement deliveries cannot be executed. Claims for compensation, including but not limited to compensation for loss or damage other than to the machinery supplied as well as for wasted expenditure as defined in Section 284 of the German Civil Code, shall be excluded.
- 9.4 Warranty claims shall be time-barred upon the expiry of one year.
- 10. Claims for damages**
- 10.1 We shall be liable in accordance with statutory provisions in as much as the purchaser makes claims for damages which are based on deliberate or gross negligence or deliberate or gross negligence on the part of our representatives or vicarious agents. Provided there is no intentional breach of contract, liability damages will be limited to the foreseeable and typically occurring loss.
- 10.2 We shall be liable in accordance with statutory provisions in as much as we break an essential contractual obligation; however in this case the liability damages will be limited to the foreseeable and typically occurring loss.
- An essential contractual obligation exists if the breach of duty relates to an obligation whose contravention jeopardizes the purpose of the contract. This does not include the non-fulfilment of fixed delivery dates as long as the non-fulfilment of a fixed delivery date is not the equivalent of a default. Similarly a violation of essential contractual obligations does not exist if individual specifications of the contractually agreed work are not maintained in as far as the performance of the work as a whole is not impaired.
- 10.3 The liability for culpable injury to life, body or health remains unaffected.
- 10.4 To the extent that no other agreement differing from the above has been reached, liability shall be excluded.
- 10.5 The expiry period for claims for liability is 12 months from the passing of risk.
- 11. Retained ownership rights**
- 11.1 We shall retain all rights to the goods delivered pending receipt of all payments due under the delivery contract. In the event of any breach of contract on the part of the buyer including but not limited to default of payment, we shall be entitled to recover the goods. Such recovery shall not be deemed to constitute rescission of the contract by us unless we expressly declare this in writing. Seizure of the goods shall always be deemed to constitute rescission of the contract by us. After recovering the goods, we shall be authorised to liquidate them as we see fit and to apply the proceeds from such liquidation to the amounts due from the buyer less reasonable liquidation costs.
- 11.2 The buyer undertakes to treat the goods carefully and, in particular, to insure them at their replacement value against the risk of fire, water and theft at its own expense. If any maintenance or service activities are necessary, the buyer shall arrange for these to be done regularly at its own expense.
- 11.3 The buyer shall notify us immediately in writing in the event of any third-party seizure or other intervention so that we may commence proceedings pursuant to Section 771 of the German Code of Civil Procedure. If we are unable to recover the court and out-of-court costs incurred as a result of commencing proceedings pursuant to Section 771 of the German Code of Civil Procedure from such third party, the buyer shall be liable to refund such costs.
- 11.4 The buyer may resell the goods as part of its ordinary business activities but agrees to assign all receivables due from its buyers or third parties equalling the final invoice amount (including value added tax) of our receivable arising from the resale of the goods regardless of whether the goods are resold in processed or non-processed form. The buyer may collect this receivable notwithstanding the fact that it has been assigned to us. This shall not prejudice our right to collect the receivable ourselves. However, we undertake to refrain from collecting the receivable as long as the buyer complies with its payment obligations from the proceeds collected, is not in default of payment and, particularly, has not lodged any application for the commencement of insolvency, bankruptcy or creditor settlement proceedings or has not suspended its payments. Otherwise, we may demand that the buyer disclose to us the amount of the receivables assigned to us and the names of the persons owing them, provide all information required to collect the receivables, produce all the related documents and inform the third-party debtors of the assignment.
- 11.5 The buyer shall always process or modify the goods delivered on our behalf. If the goods delivered are processed with other objects not belonging to us, we shall acquire co-ownership rights in the end product commensurate with the value of the goods delivered (final invoice value including value added tax) relative to the other objects processed. Such final products shall be subject to the same provisions as those applicable to the goods delivered subject to our retained ownership rights.
- 11.6 If the goods delivered are inseparably combined with other objects not belonging to us, we shall acquire co-ownership rights in the new end product commensurate with the value of the goods delivered (final invoice value including value added tax) relative to the other goods combined as of the date of such combination. If the goods are combined in such a way that the buyer's goods can be assumed to constitute the main item, the buyer shall assign pro-rated co-ownership rights to us. The buyer shall exercise the resultant sole or co-ownership rights on our behalf.
- 11.7 In the event that the value of the existing security exceeds the total value of our claims against the buyer by more than 20 %, we shall be obliged at the buyer's request to release securities as we see fit.
- 12. Place of fulfilment and legal venue**
- 12.1 All disputes shall be referred to the responsible courts of law in the town or city in which we are domiciled. However, we shall also be entitled to commence suit against the buyer before the court of law in its town or city of domicile.
- 12.2 German law shall apply; the UN Convention on Contracts for the International Sale of Goods shall be excluded.
- 12.3 In the absence of anything to the contrary in the confirmation of order, our domicile shall be deemed to be the place of fulfilment.
- 13. Confidentiality**
- 13.1 The orderer is obliged to treat the conclusion of the contract as confidential, and must not make any reference to its business relationship with us without our written consent.
- 13.2 The contracting parties mutually undertake to treat as industrial secrets all commercial or technical information that is not publicly known and of which they are made aware as a consequence of their business relationship, and to ensure that their employees are bound by the same obligation. This shall continue to apply for a period of 36 months after the contractual relationship ends.
- 13.3 The protected information particularly includes technical data, images, drawings, calculations and other documents, procurement quantities, prices and information relating to products and product developments, all current and future research and development plans, customer and supplier information and all corporate data of the other contracting partner.

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