

General Terms and Conditions of Maniowoc Deutschland GmbH

§ 1 Scope

- (1) For all orders placed with us only our terms and conditions of sale apply. They also apply for future business with the customer.
- (2) We do not recognise opposing conditions or conditions of the customer that deviate from our terms and conditions of sale, unless we have expressly agreed to their validity in writing. Our terms and conditions of sale also apply if we implicitly perform the delivery to the customer in the knowledge of opposing conditions or of conditions of the customer which deviate from our terms and conditions of sale.
- (3) All agreements, which have been made between us and the customer for the purpose of the performance of this contract, are laid down in writing in this contract.

§ 2 Offer and Order

- (1) Our offers are subject to change, unless the order confirmation states something different.
- (2) Contracts and other agreements only come about as a result of our confirmation in writing.
- (3) We reserve the right to make technical alterations.

§ 3 Documents

- (1) Drawings, diagrams, dimensions, weights or other performance data handed over only become binding if this has been expressly agreed in writing. Catalogues, prospectuses, etc. only contain approximate data and can only be the basis for customer complaint, if they have formed part of a contract or an agreement between the parties.
- (2) Right of ownership and copyright in all documents entrusted to the customer, such as e.g. calculations, drawings, drafts, samples and other documents remain with us. Such documents may not be made available to third parties without our special written agreement and are to be returned immediately at our request.

§ 4 Delivery and Transfer of Risk

- (1) Insofar as nothing to the contrary is agreed in writing, our deliveries are made accordant Incoterms 2000 and ex works or warehouse at our option, in this connection this can be the works or warehouse of a third party.
- (2) A binding delivery date is only agreed, if it is confirmed by us as such in writing. A prerequisite for a binding delivery date is the proper production of all documents to be supplied by the customer, approvals, releases as well as the clarification of technical questions, such as for example, power requirements, dimensions, etc. Should it emerge that this is not the case or should subsequently a modified performance of the contract be agreed, we do not have to answer for the delay and the delivery date is to be adapted accordingly.
- (3) A binding delivery date is considered as met when the goods are sent to the given delivery address on this date. Adherence to the delivery date presupposes the prompt fulfilment of the obligations of the customer including the prompt payment of any deposits or repayments agreed.
- (4) The delivery date shall be adjusted suitably in the event of actions within the framework of industrial disputes, in particular strikes and lock outs, and in the event of other difficulties which are beyond our control, if such difficulties are demonstrably of material influence on the completion or delivery of the article of sale. This also applies if such circumstances occur at our suppliers.
- (5) In the event of default of delivery which is down to us the customer can only withdraw from the contract after an appropriate extension to the deadline of at least four weeks has been set with an express penalty of denial of service. Claims for damages are precluded in consideration of the restriction in §7 (6).
- (6) Partial deliveries and partial performances by us are permitted and shall be invoiced as they are made.
- (7) Moving goods into place, installation and initial operation at the customer site is not undertaken by us and shall only in the event of express special agreement in writing belong to the delivery scope.
- (8) In the event of default in accepting the delivery of goods or untimely call by the customer, regardless of our claim of performance and other rights, we are entitled to demand to be compensated for our damages arising, including any additional expenses such as storage, etc. In so far as aforementioned conditions exist, the risk for the goods shall be transferred to the customer.
- (9) The risk of destruction or of accidental deterioration of the goods is in any event transferred to the customer at the latest when the goods are handed over to the person transporting them. This applies irrespective of who bears the costs of carriage. The risk is also transferred to the customer, if goods are stored at the request of the customer.
- (10) If the loading and transportation of the goods are delayed for a reason under the control of the customer, then we are entitled to store the goods as we see fit, at the expense and the risk of the customer, to take all measures deemed suitable for the preservation of the goods and to invoice the goods as delivered.

§ 5 Prices and Payment

- (1) Our prices are in EURO and unless otherwise directed are delivery ex works. The statutory value added tax is not included in the prices and for German customers will be itemised in the invoice at the statutory level for the day on which the invoice is raised. The price that shall be used for the calculation of prices is the price that is current on the day of the delivery or performance of service.
- (2) In the case of orders which take over three months to execute, we reserve the right to alter the prices accordingly, if after conclusion of the contract cost reductions or cost increases occur, especially as a result of tariffs being agreed or changes in the prices of materials. We will show proof of these to the customer on request.
- (3) Changes to the order at the request of the customer, which we receive after our order confirmation, shall be charged separately.
- (4) Insofar as nothing to the contrary is agreed, the purchase price for goods and service is to be paid in advance or cash on delivery. For non-domestic customers cash in advance can be changed to bank-confirmed Letter of Credit with our acceptance. All cost for the Letter of Credit are account to the customer.
- (5) Even on individual agreed terms of payment we reserve the right to ask for advance payment of the agreed purchase price. Particularly in the case where before the conclusion of the contract it becomes discernable that the claim on the payment of the purchase price is jeopardised by the lack of ability to pay. Such a threat to the claim on payment of the purchase price is present if the trade credit insurance does not encompass the limit of liability which is required for the order. This rule also applies for the case that we first come by knowledge of the lack of ability to pay after the conclusion of the contract. If the requirement for advance payment is not fulfilled by the customer, then we can without any case for liability for compensation withdraw from the contract.
- (6) All payments are to be made only to us or to the bank account named in our invoice postage paid and free of costs. We only accept money orders, cheques and particularly bills after prior agreement as on account of payment and not as performance of payment. Costs for collection, exchange charges and discount charges are charged to the purchaser.
- (7) Offsetting or the exercise of any right of retention in the event of any counter claims by the customer not having the force of law are excluded. The exercise of the right of retention is also excluded insofar as counter claims of the customer are not based on the same contractual relationship.
- (8) In the event of late payment or in the event of default, we shall charge interest on arrears of 8 % over the base interest rate p. a.. We reserve the right to enforce higher actual damages incurred.

§ 6 Reservation of property rights

- (1) We reserve the property of the delivered goods until full payment of all claims arising within the scope of the business relationship.
- (2) The customer is entitled to resell the retained goods to third parties in a normal business transaction. The customer shall transfer the claims resulting from the resale of the retained goods to us to the amount of the invoiced amount including value-added tax agreed with us. This transfer applies irrespective of whether the goods are resold without being worked up or after being worked up. The customer remains entitled to recover the claim even after the transfer. Our authority to recover the claim ourselves remains unaffected by this. We will not however recover the claim as long as the customer fulfils his payment obligations from the money received, is not in payment arrears and in particular no petition has been filed to open insolvency proceedings nor is there suspension of payments.
- (3) The handling and the processing of the goods by the customer shall always take place in our name and on our behalf, without any obligation for us resulting from this. Insofar as the goods are processed with other articles which do not belong to us, we shall acquire co-ownership of the new item to the extent of the value of the percentage (of the agreed purchase price).
- (4) The customer is obliged to treat the retained goods with care and at his own expense to insure them adequately against theft, damage, destruction and accidental deterioration (in particular fire and water) on a replace as new policy and to show evidence of this on request. He transfers his claims arising from the insurance policies to us as of now.
- (5) The customer may not pledge retained goods nor assign them for security. In the case of an approach by a third party, the customer has to inform us immediately in writing.
- (6) Insofar as the reservation of property rights or the transfer of claims should because of foreign statutory regulations be null and void or unenforceable, the securities arising from the reservation of property right or the transfer of claims in this area shall apply as agreed. If the cooperation of the customer is required for this, he is to take all measures which are required to substantiate and to preserve the security.

- (7) Insofar as the value of all our rights to protection from risk exceeds the amount of all secured claims by 20 %, we shall release a corresponding proportion of the rights to the protection from risk.

§ 7 Notice of defect, Warranty and Indemnification

- (1) The customer is obliged to give notice and details in writing of obvious defects in our delivery or provision of service immediately after performance of service, of non-obvious defects immediately after they are discovered. We cannot consider verbal and/or later notices of defect.
- (2) Errors made by the customer with regard to correctness and completeness in the documents which may have been supplied to us for the execution of the order, in the dimensions and other details supplied cannot constitute a defectiveness in our service.
- (3) There are no claims for defects in the event of only slight deviation from the agreed qualities, in the event of only slight restriction to usefulness, in the event of natural wear and tear and in the event of damage which occurs after the transfer of risk as a result of incorrect or careless handling, excess load, unsuitable operational resources, including cleaning agents, defective building work, unsuitable building site or because of special outside influences, which are not provided for in the contract, as well as in the event of non-reproducible software errors. If improper repairs or alterations are carried out by the customer or third parties, there shall be no claims for defects for these and for any consequences arising out of them.
- (4) Claims for defects in the case of new goods lapse after twelve months, in the case of second-hand goods six months after delivery of the goods to the place of destination has been effected by us. The aforementioned provisions do not apply, insofar as the law compulsorily stipulates longer periods. Before any goods are returned, our agreement is to be obtained. Claims for defects extends, as long as nothing different is agreed, exclusively for parts. Further regulations are included in our respectively valid terms of warranty.
- (5) Should despite all care expended the delivered goods show a defect, which was already present at the time of the transfer of risk, then we will, provided there is a notice of defect in due time, at our option correct the goods or deliver replacement goods. It is incumbent upon the customer to evidence the defect. If the supplementary performance fails the customer can – irrespective of any claims for damages – withdraw from the contract or reduce the payment accordingly.
- (6) We accept liability in accordance with the provisions of the law, insofar as the customer asserts a claim for damages, which is based upon intent or gross negligence, including intent or gross negligence of our representatives or agents, or if we culpably infringe a material contractual obligation. Insofar as we are not charged with intentional infringement of a contractual obligation, the liability for compensation is limited to the predictable, typical damages. The liability for culpable injury to life, the person or health remains unaffected; this also applies for the mandatory liability in accordance with the German Product Liability Law. In the absence of an alternative agreement to the aforementioned, liability is excluded.

§ 8 Other

- (1) This contract and all legal relations between the parties are subject to the law of the Republic of Germany with the exception of the UN Convention on Contracts for the International Sale of Goods (CISG).
- (2) Place of performance and exclusive jurisdiction for all legal disputes arising from this business relationship is Herborn, insofar as nothing to the contrary has been agreed in writing.
- (3) Should individual clauses in this contract be or become null and void or contain a loophole, then the remaining clauses remain unaffected by this.
- (4) The customer has to contractually oblige commercial third parties, to whom he passes on the delivered goods, to dispose of them correctly at their own cost in accordance with the statutory regulations in force at that time when they have finished using them and in the event that they are passed on again to impose a corresponding obligation to the new owner. If the customer omits to contractually oblige third parties, to whom he passes on the delivered goods, to take over the obligation of disposal and the obligation to pass on the obligation, then the customer is obliged to take the delivered goods back at his own cost when use of them has ended and to dispose of them correctly in accordance with the statutory regulations. (This clause does not apply for Germany)

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