

SPERR & LECHNER • MACHINE CONSTRUCTION • D-ÖHRINGEN-OHRNBERG

General Terms & Conditions of Delivery of Machines and Parts

I. OFFER

The appertaining documentation to this offer such as illustrations, drawings, weight and measurement specifications are only approximately accurate unless they are otherwise expressly described as valid. The supplier retains the rights of ownership and copyright on cost proposals, drawings and other documentation. Any such specification, sales literature, quotation etc shall be strictly confidential and must not be made available to third parties.

II. THE SCOPE OF THE DELIVERY

The scope of the delivery is determined entirely by the written confirmation of the order by the supplier, in the event of an offer by the supplier, and if in the event it is made bearing a time limit and specified date of acceptance then it will be binding should a written confirmation not be to hand. Ancillary verbal agreements and amendments require the written confirmation of the supplier.

III. PRICE AND PAYMENT

- Prices are quoted, unless otherwise specified, as net ex-works with the addition of the legal rate of value added tax. They particularly do not include customs duties, frontier expenses, insurance, transport or storage or packing costs.
- If there is an increase in the prices of materials and raw materials, wages and salaries, manufacturing and transport costs between the time of the signing of the contract to the dispatch of the goods, the supplier is entitled to raise the agreed upon prices accordingly.
- Payments are to be made by interbank payment transaction without any rebate as follows: 1/3 on receipt of order confirmation, 1/3 as soon as the customer has been informed that the main parts are ready for dispatch, with the remaining amount as per agreement of at the latest 30 days after date of invoice and receipt of the invoice. The acceptance of bills of exchange and cheques is permitted only in lieu of fulfillment. Costs for discounting and booking are to be born by the customer.
- In the event of delay in payment, the supplier is entitled to charge interest to the amount of 9 per cent per annum above European Central Bank reference rate from then being valid, until payment in full is made. The same applies for extending the time of payment. If the supplier is entitled to demand increased interest because of other legal grounds, then the supplier is entitled to charge higher interest.
- Withholding payment or set-off is only allowed with undisputed or legally binding ascertained counterclaims.
- In the event an order is cancelled by the customer, the supplier shall be entitled to damages at a fixed rate, if the order is cancelled following confirmation this rate shall be 10 % of the invoice amount and, if cancelled after the invoice is issued and/or after notification that the goods are ready to ship, this rate shall be 20 % of the invoice amount.

IV. DELIVERY TIME

- The delivery time begins with the dispatch of the order confirmation, though not before the customer has provided the prerequisite documentation, permissions, releases, nor before the booking of the agreed upon down payment.
- Furthermore the term of delivery is fulfilled, when the article of sale has left the plant or its readiness for dispatch is announced.
- The delivery time will extend itself in relation to the action taken in respect of work disputes, particularly strikes and lockouts as well as the occurrence of unforeseeable obstacles which lie outside the realm of the supplier in so far as such obstacles can be shown to have considerably hampered the fabrication or dispatch of the delivery item. This also applies when the circumstances of the sub-supplier are applicable. The above-mentioned circumstances will not make the supplier liable if they occur during an already existing delay. In serious cases the supplier will inform the customer as soon as possible of the beginning and end of such obstacles.
- In case the customer due to a delay bears a loss and the supplier is insofar responsible, the customer is entitled to compensation for damage resulting from delay. It amount to ½ of a hundredth for each full week of delay of the total. However limited to 5 % of the price of the part of the delivery not having been delivered timely due to the delay.
- If dispatch is delayed at the wish of the customer, then they will be charged for costs ensuing for storage in the works of the supplier, at least 1/2 of a hundredth of the invoice amount for each month beginning one month after announcement of readiness for dispatch had been given. Evidence of greater or lower storage costs can be given by both parties. After the fruitless extension of an appropriate fixed length of time, the supplier is permitted to dispose of the delivery item and to supply the customer with an appropriate extended length of time.
- Claims for damage by the customer are excluded even if delay in delivery as well as claims for damage instead of the work exceed that described in no. 4 of the specified limits, for they are nevertheless a delayed delivery, even after the end of the delivery time specified by the supplier. This does not apply in the event that there is legal compelling liability on account of absolute negligence or injury to life, body or health. The customer may retract from the legal stipulations of the contract in so far as the delay of the delivery lies in the hands of the supplier. An amendment of the onus of proof to the disadvantage of the customer is not part and parcel of the current regulation.
- The customer is committed to reply to the request of the supplier within a fair and reasonable period of time, whether or not on account of the delay of the delivery, they, the customer, wish to withdraw from the contract or to insist on receiving the delivery.

V. TRANSFER OF RISKS

- The goods will be delivered ex works at customer's risk also in case prepaid carriage other services e.g. the dispatch, delivery and installation costs was agreed. In case the dispatch is delayed due to circumstances the customer is responsible for, the customer bears the risk from the date of readiness for dispatch. On demand of the customer a transport insurance or any other insurance will be concluded at customer's expenses.
- Items of delivery received which have insignificant defects are to be accepted by the customer as satisfactory according to the regulation in section VII.
- Part deliveries are permissible.

VI. RETENTION OF TITLE

- The supplier retains the ownership of the delivery item until all payments stipulated in the delivery contract have been received.
- The supplier is entitled to insure the delivery item at the expense of the customer against theft, breakage, fire, water and any other damage unless the customer can prove that they have already taken out insurance cover.
- The customer is revocably entitled to dispose of the delivery item within its usual business operations. Further dispositions such as pledging of goods or transfer by way of security are not allowed. The customer shall inform the supplier directly about any seizure of a third party to the goods or to the assigned claim.
- If there is a breach of contract by the customer, particularly gross delay in payment, such as after the end of a suitable specified length of time, the supplier is entitled to cancellation and to withdrawal. At the same time the legal stipulations regarding the dispensability of a time limit remain unchanged. The customer is bound to surrender the delivery item. The monetary confiscation in lieu of the conditional sale as well as the pledging of the delivery item by the supplier are not a valid reason for withdrawal from the contract.
- The customer is entitled to sell the delivery item in a proper business manner further. In case the delivered goods are combined with other objects to create a new object being the main object and the customer sells this newly created object or new objects being the property of the supplier or still being under retention of title – no matter under what condition – to third parties, the customer forthwith assigns all its claims concerning the sale of the goods of the supplier to the supplier in order to provide security of all claims of the supplier against the customer resulting out of the business relationship. The customer is revocably entitled to collect these claims on its own behalf. On demand, the customer shall inform its customers about the assignment and shall provide the supplier with necessary information and the relevant documents in order to enable the supplier to assert his claims., though binds the supplier not to exhort these claims as long as the customer duly adheres to the payment commitments. The supplier can demand that the customer notifies the supplier of the ceded claims as well as the name of the debtor and all the specifications necessary for the recovery as well as all the appertaining documentation at the same notifying the debtor of the customer's cession. If the delivered item is sold along with other items not belonging to the supplier, then the customer cedes his claim on the new buyer, that is to say the delivery price agreed upon between supplier and customer. Processing or reorganization of conditional goods is always to be done by the customer on behalf of the supplier. Should the conditional

goods be processed or mixed with other items that do not belong to the supplier, the supplier thereby acquires joint ownership of the new item corresponding to the value of the conditional goods at the time of processing or mixing. If goods of the supplier are mixed in with other moveable items

to form a unified or inseparable mass and if the other ingredient is regarded as a main one, then it is validly recognized that the customer transfers the respective part ownership to the supplier, in so far as the main ingredient actually belongs to the customer. The customer safeguards the ownership or joint ownership for the supplier. That which applies to conditional goods also applies to the processing, transformation or mixing of the composite ingredient. The supplier is obliged to release their rightful safeguards if the value of appertaining safeguards, in so far as they have not been settled, exceed more than 20%.

VII LIABILITY FOR DEFECTS IN THE DELIVERY

- The customer is obliged to inspect the delivery item and to report in writing any defects immediately. The reprimand time limit of up to 2 days is legally binding. Clause 1 and clause 2 also apply for excess or short deliveries as well as incorrect ones.
- In so far as these faults occurred within the period of limitation before the transfer of risk, the supplier may decide whether they repair or re-deliver free of charge, without regard to the processing time that will be taken.
- Claims for defective goods are subject to limitation of 12 months after delivery unless the respective legal section §§ 438 paragraph 1 no. 2 BGB [Federal German Law Book] (construction work and items for construction work), 479 paragraph 1 BGB (Claims of recourse) und 634 paragraph 1 no. 2 BGB (faulty construction) demand a longer period. This is also true in cases of injury to life, body or health and if there has been an intentional or gross careless neglect of duty on the part of the supplier or their assistant as well as fraudulent concealment of the fault. The regulations regarding expiry constraints, hindrances or recommencement of the time periods remain unaffected.
- Claims for defects are not valid for negligible deviation from the contractual conditions, for negligible detection of the usability, for natural wear and tear or damage, which occurs after handing over of the risk, caused by faulty or careless handling, excessive demands, the use of unsuitable operating substances, faulty construction work, unsuitable installation foundations or ground effected by extreme influences which were not anticipated in the contract, as well also, by non-duplicable software faults. If improper alterations or repair work are carried out by the customer or a third party, no liability for claims for defects will be considered for these and the subsequent consequential repercussions.
- First of all opportunity is to be given to the supplier to rectify the fault either by obliterating the defect or by supplying a faultless item within the stipulated time limit. In the event that the rectification is unsuccessful, the customer can retract from the contract or reduce their remuneration for the supplied item - irrespective of any damage compensation claims, as per article IX (other damage compensation claims).
- Generally article IX applies for damage compensation claims (other damage compensation claims). Continued or other claims as those in articles VIII and IX regulated claims of the customer against the supplier and their assistants appertaining to defects in quality are excluded.
- Claims by the customer for remuneration of costs arising from rectification of the fault, especially transport, route, working and raw material costs are excluded in so much as the expenditures have increased owing to the delivery item being subsequently delivered to another location than the subsidiary of the customer, unless the diversion of the delivery corresponds to the customer's contractually stipulated arrangements.
- The legal right of withdrawal of the customer owing to the presentation of a defect in the delivery does not automatically incur liability for the supplier. In any event the customer may only withdraw from the contract by presenting evidence of a breach of duty on the part of the supplier.

VIII. INDUSTRIAL PROPERTY RIGHTS AND COPYRIGHTS; FLAW IN A TITLE

- Unless otherwise agreed upon, the supplier is committed to carry out the delivery in the country of the delivery location free of industrial property rights and copyrights to a third party (subsequently: trademark rights). In so much as there is an infringement of the trademark rights by a third party of the goods duly contractually supplied by the supplier to the customer, the supplier holds the customer liable for the subsequent legal claims made by the supplier on the customer as per article VI, no. 4 in the stipulated period as:
 - The supplier at their own expense will decide to choose whether with the affected delivery will be an application for the right to utilization by amending the delivery so that the trademark rights will not be infringed or on the other hand that it be exchanged. If the supplier is unable to instigate this within suitable terms and conditions, then the customer is entitled to legally withdraw, or be awarded rights of impairment.
 - The liability of the supplier for damage compensation is laid out according to article IX.
 - The aforesaid stipulated obligations of the supplier are only binding in so far as the customer has informed the supplier in writing of the claims by the third party, that there has been no infringement and all the defence measures and compromise settlements remain open to the supplier. If the customer discontinues utilization of the delivery for reasons of deficiencies caused by damage or other important reasons, then they are obliged to inform the third party that cancellation of the utilization is not tantamount to a breach of the trademark rights.
- Claims of the customer are excluded in so far as they still have jurisdiction over trademark rights infringements. Claims are further excluded in so far as the customer infringes the trademark rights with special specifications for applications of the delivered item unauthorized by the supplier or that the claims arise from the customer having altered the delivered item or applied it along with another product which had not been supplied by the supplier in question.
- In the case of an infringement of the trademark rights, as per no. 1a, regularities claims of the customer, incidentally the determination of the article VII nos. 3 and 5 correspondingly.
- On presentation of such flaws in a title, the stipulations of article VII correspondingly apply.
- Further or other regulated claims owing to a flaw in title by the customer against the supplier and their assistant than listed in this article are excluded.

IX. OTHER COMPENSATION CLAIMS AND IMPOSSIBILITIES

- Compensation for damages and extra expenses by the customer as a result of damage compensation claims are excluded regardless of whatever legal reasons, particularly infringement of obligations arising out of being in a state of debt or from unauthorized handling.
 - This does not apply in the event of mandatory liability for gross injury to the body, health e.g. as per product liability law, in the event of intentional gross carelessness, the gross infringement of essential contractual obligations. Claim for damage compensation for the infringement of essential contractual obligations is however limited to the typical contractual foreseeable damages, in so far as there is evidence of intentional or gross carelessness or liability of injury to life or health. An amendment of the onus of proof to the disadvantage of the customer is not part and parcel of the current regulation.
 1. In the event that a delivery is impossible, the customer is entitled to claim compensation for damage. This does not apply if the supplier is not responsible for the impossibility of delivery. The damage compensation claim of the customer is limited to 10% of the value of the respective part of the delivery which would be impossible to properly use in normal application. This limitation of liability is not valid in the event that mandatory liability exists on account of intentional gross carelessness or injury to life, body or health. An amendment of the onus of proof to the disadvantage of the customer is not part and parcel of the current regulation. The right of the customer to withdraw from the contract remains unaffected.
- ### X. COURT OF JURISDICTION AND APPLICABLE RIGHT
- This agreement shall be governed by and construed in accordance with German law and each party agrees to submit to the jurisdiction of the courts having jurisdiction of for the seller. The seller shall have the right to bring a claim before a court at the customer's principal place of business or at his discretion before any other court being competent according to any national or international law.

XI. MISCELLANEOUS

The invalidity or modification of any or several clauses of these terms and conditions does not affect the validity of the remaining terms and conditions. The contractual parties are obliged to replace the invalid clauses by equal regulations having the same economic meaning. The German text shall prevail in case of doubt.