

Terms and Conditions of Sale and Delivery

ARTUR NOLZEN Industrieofenbau GmbH & Co. KG, Wuppertal-Ronsdorf, Version I (6/02)

1. Scope and conditions

Solely these Terms and Conditions of Sale and Delivery apply to our deliveries and services. The Customer's terms and conditions of business that we do not expressly acknowledge shall not become an integral part of the business relationship, including if we do not object to such conditions in an individual case.

2. Entering into a contract, contractual content

2.1 Our offers are subject to change without notice.

2.2 An order shall only be binding for us if we accept it in writing (confirmation of order).

2.3 The content of the delivery contract shall be determined solely in accordance with our confirmation of order.

2.4 In the case of details about our products in our pamphlets, catalogues, price lists, drawings, illustrations or other documents, such details are at all times approximate values that are customary in the sector. Provided limits have not been expressly specified for permitted variations, variations that are customary in the sector shall be permitted.

3. Delivery; storage fees

3.1 Delivery periods and dates apply at all times as approximate dates unless they were expressly stated as having binding force in the confirmation of order. However, goods shall be delivered at the latest within four weeks following the proposed delivery period or delivery date. The delivery periods and dates shall be extended for the period in which the Customer fails to honour its obligations to us, for example the lacking timely receipt of the documents, licenses and releases to be provided by the Customer or violation of other co-operation duties, unless the delay was caused by us. This does not affect further claims on our part, in particular regarding default. In the case of amending an order, the delivery periods and dates shall be extended by a reasonable period.

3.2 Goods shall be delivered on the date specified in the contract. Should events occur that are not our responsibility such as disruptions as a result of force majeure, strikes, lock-outs or other lawful industrial action, interruption of operations in the case of own delivery, the delivery time shall be extended by the period of disruption plus a reasonable start-up period. The same applies if the performance is delayed for reasons within the Customer's sphere of responsibility.

3.3 Partial deliveries are permitted where acceptable for the Customer.

3.4 The shipping mode and packaging are subject to our discretion. The goods shall be insured against transport damage and other risks only at the express request and at the cost of the Customer.

3.5 If the shipping or delivery is delayed at the Customer's request by more than one month following notification of readiness for dispatch, the Customer may be charged for each month in which the delay continues 0.5 % of the price of the goods, at most, however, 5 %. This does not affect the right to assert a claim for damage that exceeds that amount. The Customer is entitled to furnish proof of less damage.

4. Passing of risk

4.1 Goods shall be shipped at the Customer's risk. Risk shall pass to the Customer, including if freight-free delivery is agreed upon, at the handover of the goods to the forwarding agent or carrier or to the other person entrusted with the transportation at the start of the loading procedure, at the latest, however, when the goods leave our factory. If the shipping is delayed for reasons that are the Customer's responsibility, risk shall pass upon the provision of notification of readiness for dispatch. Storage costs following the passing of risk shall be borne by the Customer.

4.2 Insofar as the passing of risk is not specified in accordance with sub-section 4.1, risk shall pass to the Customer upon the handover of the goods, at the latest upon the setting up and assembly, unless the parties had agreed on the passing of risk following a fault-free trial run. If the handover, setting up, assembly or trial run are delayed for reasons that are the Customer's responsibility, risk shall pass to the Customer at the time at which the described action would have been taken without the delay.

5. Setting up and assembly

5.1 The Customer is to assume at its own cost and risk and make the following available in good time:

5.1.1 All earth, building and other supplementary work that is customary in the sector, including securing the building site and the specialists and assistants, building materials and tools required in that respect;

5.1.2 The requirements and materials required for the assembly and commissioning such as scaffolding, lifting equipment and other devices, fuels and lubricants;

5.1.3 Energy and water at the point of use, including the connections, heating and lighting;

5.1.4 Suitably sized, dry and lockable rooms at the assembly point for storing the machine parts, apparatus, materials and tools etc., and appropriate working and recreational rooms for the assembly personnel including sanitary systems in line with the circumstances. In other respects, the Customer is to adopt the measures required to protect the items that we own or are in possession of or that are owned or in the possession of the assembly personnel such as security personnel or locking devices;

5.1.5 Protective clothing and protective devices that are required as a result of special circumstances at the building site.

5.2 Prior to the start of the assembly work, the **Buyer** is to provide, without request, the details required about the location of hidden power, gas and water lines, or similar systems, as well as the required statistical details.

5.3 Prior to the start of the setting up or assembly, the provisions and items required to take up the work are to be located at the set up or assembly site, and all preparatory work is to have progressed prior to the start of the set up such that the set up or assembly can be started as per agreement and performed without interruption. Transportation paths and the set up or assembly site must be levelled and cleared.

5.4 If the set-up, assembly or commissioning are delayed as a result of circumstances that are not our responsibility, the Customer is to assume a reasonable amount of the cost of the waiting period and trips that are additionally required by us or the assembly personnel.

5.5 The Customer is to provide us each week with the duration of the working hours of the assembly personnel and the end of the set-up, assembly or commissioning without delay.

5.6 If we request acceptance of delivery that may be necessary following completion, the Customer is to carry out the acceptance without delay. If this does not occur, the acceptance shall be deemed carried out. Similarly, the acceptance shall be deemed carried out if the delivery is used.

6. Prices; terms and conditions of payment

6.1 Our prices are to be understood as net prices without any deductions ex works plus the respective statutory value added tax. If our cost factors increase after entering into the delivery contract, e.g. the cost of raw materials, energy, wages or freight, we shall be entitled, including in the event of an express agreement regarding certain prices, to adjust the delivery price appropriately. If the price increases as a result by more than 10 %, the Customer may withdraw from the contract by way of a written statement issued without delay.

If the price adjustment only applies to one part of the delivery, withdrawal regarding only such a part is permitted.

6.2 If we have assumed the set up assembly of the goods, the incidental costs in this respect such as travelling expenses, the cost of transporting the goods and the tools shall also be borne by the Customer unless something to the contrary had been expressly agreed upon.

6.3 If we become aware of circumstances that justify doubts about the Customer's ability to pay or creditworthiness, including if such circumstances already applied at the time of entering into the contract, but we were not aware of them or should have been aware of them, we shall be entitled to perform outstanding services subject to advance payment or the provision of security only and, if the advance payment or provision of security are not made within two weeks from the proposed delivery time, we shall be entitled to withdraw from the contract without the setting of an additional period. This does not affect further-reaching claims on our part.

7. Retention of payments; prohibition on setting off

The retention of payments or the setting off by way of counterclaims by the Customer are excluded unless the counterclaims have become res judicata or are acknowledged by us.

8. Reservation of title

8.1 All goods delivered by us shall remain our property up until the Customer has honoured all our claims – including those that arise in the future. The Customer may only sell the goods during the ordinary course of business.

8.2 The Customer hereby assigns to us as security receivables resulting from the reselling of the goods in the sum of the pro rata invoice amount that is attributable to our goods. If the value of the securities provided for us exceeds the secured receivables by more than 20 %, we undertake, at the Customer's request, insofar to release securities at our discretion.

8.3 The Customer undertakes to notify us without delay of seizures, confiscations or similar utilisation measures by third parties regarding the reserved goods. All intervention costs shall be borne by the Customer.

9. Duty to examine; guarantee / warranty claims

9.1 The Customer is to examine the goods supplied by us, including if samples have been sent, without delay in accordance with Section 377 HGB (German Commercial Code). In the case of obvious defects or in the case of defects that are identified during a proper examination, the Customer is to provide notification of defects within 7 days following receipt of the goods at the place of destination and in the case of hidden defects within 7 days following the identification of such defects. If we do not receive the notification of defects within the stated periods, the goods shall be deemed authorised.

9.2 We are liable for defects (material defects and defects in title) regarding the supplied goods exclusively such that at our discretion subsequent performance is provided by way of rectifying the defect or supplying fault-free goods free of charge. These Terms and Conditions of Sale and Delivery apply to such subsequent performance. In the event that such subsequent performance fails three times, the Customer may, at its own discretion, withdraw from the contract or reduce the purchase price.

9.3 We shall be liable for compensatory damages regarding or in conjunction with defects exclusively in accordance with sub-section 10.

10. Liability

10.1 Any liability on our part for compensatory damages – irrespective on whichever legal grounds – for damage resulting from the loss of life, physical injury or detrimental effects on health, in particular regarding or in conjunction with defects regarding the supplied goods, impossibility, default, unlawful acts (in particular producer's liability), is excluded unless the damage results from violation by us or our vicarious agents of obligations that are essential for the contract, negligence on our part, intent or negligence on the part of our executive bodies, legal representatives and managerial employees.

10.2 Any liability on our part for compensatory damages – irrespective on whichever legal grounds – for other damage, in particular regarding or in conjunction with defects regarding the supplied goods, impossibility, default, unlawful acts (in particular producer's liability), is excluded unless the damage results from violation by us or our vicarious agents of obligations that are essential for the contract, gross negligence on our part, intent or gross negligence on the part of our executive bodies, legal representatives and managerial employees.

10.3 Apart from cases of intentional culpability or in the case of violation of an obligation that is essential for the contract, liability on our part shall, in any case, be limited to the compensation of typical and foreseeable damage.

10.4 This does not affect claims resulting from the Product Liability Act.

10.5 The exemption from liability in accordance with sub-sections 10.1 - 10.3 also applies to our executive bodies, legal representatives, managerial and non-managerial employees and other vicarious agents.

11. Statute of limitations

11.1 Claims against us shall fall under the statute of limitations in one year unless the claims are based on intentional acts. The limitation period regarding guarantee or warranty claims in accordance with sub-section 9.2 shall commence upon delivery of the goods. In other respects, the limitation period commences at the end of the year in which the claim arose.

11.2 Contrary to sub-section 11.1, sentence 1, the limitation period in the case of parts that are exposed to warmth shall be six months. In the case of wear-and-tear parts subject to particularly heavy use such as seals, crucibles, heating facilities, electrodes and thermo-elements are excluded from the guarantee.

11.3 This does not affect Section 478 BGB (German Commercial Code).

12. Industrial property rights and copyrights

12.1 Insofar as a third party asserts justified claims against the **Buyer** regarding the infringement of an industrial property right or copyright (protected privileges) as a result of products supplied by us that are used as per agreement, we shall be liable to the Customer as follows:

12.1.1 At our discretion we shall, at our cost, either bring about a utilisation right for the product or change the product such that the property right is not infringed upon, or exchange the product. If we are unable to provide the above at reasonable conditions, we shall take back the product subject to reimbursement of the purchase price.

12.1.2 The above-mentioned obligations shall only apply insofar as the Customer informs us in writing without delay of the claims asserted by the third party, does not acknowledge an infringement and we are reserved the right to implement all defence measures and enter into composition negotiations. If the Customer discontinues using the product for reasons involving damage limitation or other key reasons, the Customer undertakes to inform the third party that the discontinuation of use is not associated with any acknowledgement by the Customer of a proprietary right infringement. Otherwise, the Customer shall forfeit the claims in accordance with 12.1.1.

12.2 The Customer's claims are excluded provided it is responsible for the property right infringement.

12.3 The Customer's claims shall also be excluded provided the property right infringement is caused by special requirements on the part of the Customer, use not foreseen by us or is caused by the fact that the product is amended by the Customer or is used in conjunction with products not supplied by us.

12.4 Further-reaching claims against us are excluded. This does not affect sub-section 10.

13. Written form; scope of the representation

13.1 All statements to be issued in accordance with the delivery contract or in accordance with these conditions, in particular advertisements, agreements, subsidiary agreements or contractual amendments are subject to the written form.

13.2 Our indoor and field staff are not entitled to make assurances prior to, in the case of or after entering into a contract that are contrary or supplementary to the content of the confirmation of order or these conditions, irrespective in whichever form. This does not apply to assurances of our executive bodies or holders of a special statutory authority (Prokuristen). This does not affect sub-section 13.1.

14. Secrecy

The Customer may only make contracts, cost estimates, drawings, plans, sketches and other documents available to third parties following our prior approval. In the event that a contract is not brought about, the Customer is to return to us at its cost and without delay documents that have been surrendered.

15. Final provisions

15.1 The location of our registered office (Wuppertal) is deemed the place of performance for all rights and obligations resulting from business transactions for both contracting parties.

15.2 The location of our registered office (Wuppertal) or the Customer's registered office is, at our discretion, deemed the place of jurisdiction for all disputes arising from the business transaction between us and the Customer. The location of our registered office is deemed the exclusive place of jurisdiction with regard to legal action brought by the Customer.

15.3 The relations between us and the Customer are subject exclusively to the law of the Federal Republic of Germany. The United Nations Convention on the International Sale of Goods (CISG) does not apply.