

General Terms and Conditions of Sale of H&S Anlagentechnik GmbH, Sulingen

§ 1

General – Scope of Application

- (1) Our terms and conditions of sale apply exclusively; we do not accept conditions of clients that may conflict with or differ from our terms and conditions of sale, except in the event that we have explicitly agreed to the application of such conditions in writing. Our terms and conditions of sale also apply in the event that we deliver unconditionally to our client, notwithstanding our knowledge of the existence of a client's conditions which may be in conflict with or differ from our terms and conditions of sale.
- (2) Our terms and conditions of sale also apply to future sales and transactions within the business relationship between the client and us, even if they are not expressly referred to.
- (3) All agreements reached between us and our client for the purpose of executing this contract are documented in this contract in writing.
- (4) Our terms and conditions of sale apply only to merchants, governmental entities and special governmental estates within the meaning of § 310 subsection 1 BGB (German Civil Code).

§ 2

Offer – Offer Documentation – Technical Alterations

- (1) Our offer is subject to alteration until the order is confirmed by the client in writing, provided the offer does not expressly specify otherwise.
- (2) We reserve all rights of property, patent rights, registered design rights and copyrights in respect of diagrams, drawings, calculations and other documents. This applies also to written documents regardless if labeled as “confidential” or not. The client is required to obtain our explicit written approval prior to transmission of such documents to third parties.
- (3) Technical alterations according to the latest technological developments are reserved, if the alterations are reasonable to the client.

§ 3

Prices – Payment Conditions

- (1) Unless not otherwise expressly agreed with the client, our prices are indicated “ex-works” (EXW), exclusive of packaging, freight costs, customs and import duty which will be invoiced separately.
- (2) Current statutory value added tax (VAT) is not included in our prices; it will be indicated separately according to the rate legally applicable at the time the invoice is issued.
- (3) Discounts may be deducted only if subject to prior written agreement.
- (4) Unless not otherwise expressly agreed with the client, the invoice amount is due net of any deductions within 8 days of the invoice date. Legal stipulations regarding the consequences of payment default shall apply.
- (5) The client is only entitled to offset in the event that his counter-claims are assessed in a legally binding judgement, undisputed or acknowledged by us. The same applies to the client's rights of retention or claim retainer rights, especially the right to withhold payment.
- (6) Payment by cheque or bill of exchange will only be accepted upon prior expressly agreement and only for processing and if they are honoured. The successful clearance of the payment is a precondition for acceptance of bills of exchange. Costs arising in connection with payment via cheque or bills of exchange shall be borne by the client.

- (7) In case of default or delayed payment, we reserve the right to charge interest on arrears or delayed payments at a rate of eight percentage points above the respective basic rate of interest according to § 247 BGB (German Civil Code). We additionally reserve the right to demand further damages for delay.
- (8) If non-compliance with payment conditions is sustained, or if circumstances become known to us after the contract has been concluded which cast serious doubt on the client's creditworthiness or solvency, all our demands for payment shall fall due immediately, regardless of any agreed payment terms. In this case we shall also have the right to demand prepayment or other form of security for any outstanding deliveries. If we had set the client a reasonable period of time to make prepayment or to provide security, and the period has elapsed without success, we are entitled to withdraw entirely or in part from the contract with the client and demand compensation.

§ 4

Delivery Time

- (1) We are entitled to perform part deliveries, if these deliveries are reasonable to the client.
- (2) It is presumed that all technical issues will be clarified prior to the commencement of the delivery time we specify.
- (3) Adherence to delivery obligations also presumes the prompt and proper fulfilment of the client's obligations. We reserve the right to plead non-completion of contract.
- (4) In the event that the client delays acceptance we are entitled to demand compensation for any related additional expenses (e.g. for storage of the purchase object). If the client is responsible for not fulfilling contractual obligations we are entitled to demand damages (including additional expenses). We reserve the right to demand additional claims, especially in the event that the client comes with its delayed acceptance at the same time into debtor's default.
- (5) In the event that the conditions in paragraph (4) apply, the risk of coincidental decline or deterioration of the purchase object is transferred to the client as soon as the client comes into delayed acceptance or debtor's default.
- (6) In the event of force majeure or other unforeseeable situations beyond our control and responsibility, e.g. difficulties in materials procurement, breakdown, strikes, lock-outs, lack of transport facilities, intervention by official authorities, problems with power supplies, natural disasters or war, we shall have the right in so far as we are prevented from fulfilling our obligations within the time required, to postpone delivery for the duration of the disturbance and an appropriate start-up time thereafter. We undertake to inform the client immediately if any of the aforementioned situations occur.
- (7) Provided that the underlying purchase contract is a firm transaction, we are liable according to statutory regulations. We are also liable under statutory regulations, in the event that the client is entitled to claim that his interest in the further completion of the contract has been eliminated as the result of a delivery delay incurred by us.
- (8) Furthermore, we are liable according to statutory regulations in the event that we acted intentionally or with gross negligence.
- (9) In the event that we, or our agents or ordinary (non-leading) assistants, are only responsible for the default with negligence our liability for damages is limited to foreseeable, typically occurring damages.
- (10) Besides the cases provided in paragraph (7) – (9) any liability for default shall be disclaimed.

§ 5

Transfer of risk – packaging

- (1) Unless not otherwise expressly agreed with the client, the delivery is "ex- works" (EXW).
- (2) According to packaging regulations transport and all other packing materials are not taken back, with the exception of pallets. The client is required to provide for the disposal of packaging at his expense.

- (3) If the client so requests, we will insure the purchase object at the client's costs against transportation risks.

§ 6

Liability for defects

- (1) Precondition for any claims of the client in respect of defects of the purchase object is the client's full compliance with all requirements regarding inspection and objection according to § 377 HGB (German Commercial Code).
- (2) If a defect in the purchase object exists, we shall be obliged to choose whether to repair the defect or to deliver a new object free of defects. In the event we choose the reparation of the defect, we are obligated to bear all costs required to eliminate the defect, in particular transport, travel, labour and material costs, provided that such costs have not increased due to moving the object to a location other than the place of performance, except that the moving is part of the intended usage of the purchase object.
- (3) We are liable according to statutory regulations in the event of fraudulent concealment of a defect; for damages to life, body or health; if we acted intentionally; as far as we have issued a guarantee; or if we are liable under the Produkthaftungsgesetz (German Product Liability Act). In case of breach of fundamental obligations or rights, that emerge from the purpose or content of the contract, we are liable according to statutory regulations if we acted with gross negligence. If we acted only with negligence our liability for damages is limited to foreseeable, typically occurring damages. In case of a gross negligent breach of a non fundamental obligation or right our liability is also limited to foreseeable, typically occurring damages.
- (4) Besides the cases provided in paragraph (3) any liability for negligence shall be disclaimed.
- (5) The Exclusion and Limitation of liability provided in paragraph (3) and (4) shall also apply to our agents, ordinary (non-leading) assistants and vicarious agents.

§ 7

Statute of Limitation

- (1) The Limitation period for claims in respect of defects of the purchase object, on whatever legal reason, is limited to one year. Notwithstanding sentence one of this paragraph, in cases of § 438 subsection 1 No. 1 BGB (German Civil Code) – legal defects of non movable things –; § 438 subsection 1 No. 2 BGB (German Civil Code) – buildings, things used for a building –; § 479 BGB (German Civil Code) – delivery regress claims of merchants – or § 634a subsection 1 No. 2 BGB (German Civil Code) – buildings and works whose results consist in the rendering of planning or monitoring services for this purpose – the statutory limitation period shall apply.
- (2) Other client's claims in respect of breach of obligations or rights, or claims out of a guarantee are time-barred after one year. This does not apply the client's right to withdraw from the contract in the event of a breach of contract we are responsible for, if the breach did not result in a defect of the purchase object. Notwithstanding the before said, the statutory limitation period shall apply for the following client's claims:
- (2.1) claims according to the Produkthaftungsgesetz (German Product Liability Act); for damages to life, body or health; or damages out of a breach of fundamental obligations or rights, that emerge from the purpose or content of the contract,
- (2.2) claims for damages if we or our agents or assistants acted intentionally or with gross negligence,
- (2.3) claims in case of fraudulent concealment of a defect,
- (2.4) or Claims in respect of remuneration of expenses according to § 478 subsection 2 BGB (German Civil Code).
- (3) The limitation period starts from the delivery of the purchase object, or in case of the production of a work with the acceptance.

- (4) Unless otherwise expressly agreed or stipulated here, the statutory regulations for start of limitation period, suspension, suspension of expiry and recommencement of the limitation period, remain unaffected.
- (5) Our claims against the client prescribe according to statutory regulations.

§ 8

General Liability

- (1) Any liability for damages not provided for in §§ 4 and 6 to 7 – notwithstanding the legal nature of the claim asserted – is excluded. This applies in particular to compensatory damage claims arising from negligence in concluding the contract, from other breaches of obligations or from criminal claims for compensation for material damages under § 823 BGB (German Civil Code).
- (2) Insofar as our compensatory damages liability is excluded or limited, such exclusion or limitation will also apply to personal compensatory damages liability of our employees, representatives and assistants.

§ 9

Title Retention Clause

- (1) We retain title to the purchase object until for the first time all payments arising from the running business relationship between us and the client have been received. In the event that the client acts in contravention to contractual stipulations, in particular in the case of payment default, we are entitled to withdraw from the contract according to statutory regulations. The withdrawal or seizure of the purchase object does imply a withdrawal of the contract unless specifically otherwise stipulated in writing by us. Once the purchase object has been withdrawn, we are entitled to liquidate the object and apply the proceeds from liquidation according to § 367 BGB (German Civil Code) to the client's debts after deducting appropriate liquidation costs.
- (2) The client is required to take good care of the object; in particular he is required to adequately insure the object for replacement value and at his own expense against fire, water damage and theft. The client is required to perform any requisite inspection and maintenance work at his own expense and risk in a timely manner.
- (3) In the event of seizure or other third-party intervention, the client is required to notify us in writing without delay, in order that we may file a legal action according to § 771 ZPO (German Code of Civil Procedure). In the event that the third party is not able to meet court and out-of-court costs related to a legal action according § 771 ZPO (German Code of Civil Procedure), the client is liable for the losses we may incur.
- (4) The client is entitled to sell the purchase object as part of ordinary business; however, he cedes to us at this point in time all receivables which may arise from a sale to his client or another third party to the level of the final invoice amount (including value added tax) of our claim, regardless of whether the purchase object has been the subject of additional processing or not. We hereby accept the cession. The client is authorized to collect the receivable notwithstanding the cession of the receivable. Our authority to collect the receivable is unaffected. We undertake, however, not to collect this receivable providing that the client honours his payment obligations out of the proceeds received, and does not default on his payments, and in particular providing that no bankruptcy, composition or insolvency proceedings have been initiated, and providing that no suspension of payments has occurred. In the event that any of the above-mentioned circumstances pertain, then we may request that the client communicates to us all ceded receivables and the relevant debtors, together with all information required for collection, especially full name and postal address of the debtors, that he transmits to us all relevant documentation and that he informs his debtors (third parties) of the cession.
- (5) The processing or transformation of the purchase object by the client is always undertaken on our behalf. In the event that the purchase object is processed with other objects not belonging to us, we acquire co-ownership of the new object created in proportion to the value of the purchase object (total invoice amount, including VAT) to the other objects processed at the time of processing. The same stipulations apply to the processed object as for the purchase object delivered under reservation.
- (6) In the event that the purchase object is inextricably mixed with objects not belonging to us, we acquire co-

ownership in the new object created in proportion to the value of the purchase object (total invoice amount, including VAT) to the objects mixed at the time of mixing. In the event that the mixture occurs in such a way that the client's object can be considered the main object, then it is agreed that the client transfers proportionate co-ownership to us. We hereby accept the transfer. The client holds at his costs custody of the solely owned or co-owned property on our behalf.

- (7) The client also agrees to cede to us as security of our claim against him, all claims that may arise against a third party from a combination of the purchase object with a plot of land. We accept the cession.
- (8) We undertake to release those securities we may be entitled to at the request of the client, if the realizable value of our securities exceeds 10% of the receivables secured; the securities released are up to our election.
- (9) Does the mandatory law of the country in which the purchase object is located not allow a retention of title as provided in the paragraphs (1) to (8) but allow other comparable, rights in rem, it is deemed that with the conclusion of the contract such rights have been reserved for us by the client. The client is obliged to participate in all actions we might initiate to secure our retention of title or any other comparable, rights in rem mentioned in this paragraph.

§ 10

Place of Jurisdiction – Place of Performance

- (1) In the event that the client is a merchant, governmental entity or special governmental estate, the exclusive place of jurisdiction for all disputes arising out of or in connection with the contract is our place of business at Sulingen, Germany. This does also apply if the client does not have a general place of jurisdiction in Germany; or the client transfers after the conclusion of the contract its place of residence out of Germany or if the place of residence of the client is unknown at the time of the commencement of legal proceedings. We are, however, entitled to take legal action against the client at his residential place of jurisdiction.
- (2) The laws of the Federal Republic of Germany apply exclusively to the legal relationship between us and the client. The UN laws governing purchases (United Nations Agreement covering the international purchase of goods – CISG) do not apply.
- (3) Unless otherwise agreed, our place of business at Sulingen, Germany is also the place of performance.
- (4) No action of us, except an expressly written waiver, represents a waiver of our rights from the contract or these general terms and conditions of sale or the law. A delay with the perception of our rights is not considered likewise as a waiver of the right concerned. A unique waiver of a right is not considered as a waiver of this right at another opportunity.