

## CONDITIONS OF SALE AND SUPPLY LW 174

### I. General

The following terms and conditions shall form an integral part of contracts governing our supplies and services unless expressly agreed otherwise elsewhere. General terms and conditions of business of customers which conflict with the following terms and conditions are expressly rejected.

### II. Quotation

Our offers are never binding until confirmed in writing. All documents belonging to our quotation, such as but not limited to drawings, illustrations, specifications of weight and measures, are given as being approximately correct, but are not binding in detail unless explicitly stated to be so. We retain the ownership and all intellectual property rights in all documents being part of our quotations, such documents may not be disclosed to any third party or be utilised for any other purpose without our consent.

### III. Scope of Supplies/Services

The contractual terms and conditions will be deemed conclusive in determining our supplies/services. We reserve the right to charge the Customer for any additional service, subsequent amendment or supplement to the order as well as specifications of acceptance, of packing and shipment communicated to us after the conclusion of the contract.

### IV. Prices and Payment

1. Unless expressly agreed otherwise, Prices shall apply ex-works in accordance with the Incoterms, always in the latest version, including loading in our facilities, however without packing. VAT shall be charged separately in the statutory amount. Payment is to be made in EURO according to official exchange rate. Any change in exchange rates are at the risk of Customer.

2. To the extent we are obliged to take back the packing material used for transportation according to the „Verpackungsverordnung“ (Regulation on Transportation Packing), the Buyer shall bear the costs incurred for the return of the pertaining packing materials as well as the reasonable costs of its disposal or to the extent this is possible and we deem it to be useful - the reasonable additional costs incurred as a result of any reutilization. Reimbursement of the packing costs invoiced at cost price is not possible.

3. The withholding of payment or offsetting on the basis of any counterclaims of Customer disputed by us shall not be permissible.

4. Unless expressly agreed otherwise, payment of our invoices shall be due immediately on receipt without discount deduction. Payment shall be deemed to have been effected only when credited unconditionally to our account.

5. In the event that Customer exceeds an agreed or set payment period, we are entitled to charge Customer interest at 8 % p.a. in excess of the discount rate (Basiszinssatz) of the European Central Bank. We reserve the right to enforce a higher claim for compensation for default. If Customer is in default of payment, we shall, after a period of grace set by us has elapsed, be free to withdraw from the agreement or demand compensation for default in the amount of the loss incurred.

### V. Delivery period

1. The delivery period indicated by us shall commence in accordance with the contractual terms and conditions, however not until Customer has provided us with such documents, approvals, releases and other services owed by him and not until we have received a down payment agreed upon.

2. The delivery/performance period shall be appropriately extended if Customer requests a change in the technical design and in case of force majeure and other unforeseen circumstances beyond our control, independently whether such circumstances occur in our works or at those of our suppliers, e. g. operating troubles, strikes, lock-outs, scrap material, and any failure of any of our suppliers to make timely delivery of main parts and raw materials. In case such events substantially change the economic importance or the subject matter of our performance, or have a material influence on our works and also in the event performance has become impossible, the contract shall be adapted appropriately. If such adaptation is economically unjustifiable, we reserve the right to rescind the contract in whole or in part without liability of any kind.

3. Partial deliveries are permitted.

4. The delivery period shall be deemed to have been complied with if before its expiry the goods to be supplied have left our works or Customer has been informed that the goods are ready for shipment.

5. If delivery of the goods is delayed due to the fault of the Customer, we are entitled to issue the invoice, becoming due for payment at such time and date agreed upon, at the confirmed delivery date or the date the goods are ready for shipment. We reserve the right to charge Customer storage fees equal to 0,5% for each month or part of the month up to a maximum of 5 % of the invoice amount, or, if storage takes place outside of our premises and we can prove higher storage cost, the amount of such higher costs.

6. If Customer has contributed to a delay in delivery (e. g. change order, delay in providing materials or effecting payment etc.) he shall not be entitled to claim for penalties or liquidated damages agreed upon.

7. If Customer suffers loss or damage as a result of a delay in delivery for which we are solely responsible, Customer, after an additional grace period of 14 days, shall be entitled as our sole obligation and Customer's exclusive remedy, to request payment of liquidated damages. Said liquidated damages shall amount to 0,5 % for each full week of the delay, but limited to a maximum of 5 %, of the value of that part or our total supply which as a result of the delay cannot be used on time or in accordance with the contract.

If delivery or performance is delayed in accordance with this section and after Customer has granted us a reasonable period of grace with the express declaration that Customer will refuse to accept the supply after expiry of this period and if the period of grace is not complied with, Customer shall be entitled to rescind the contract. Any further claims of Customer for delays are excluded. The above exclusions of liability shall not apply if a member of our management board or one of our senior executives commits an act of wilful misconduct or gross negligence.

8. In case Customer requests acceptance of the supplies, all terms and conditions relating thereto have to be agreed upon on conclusion of the contract at the latest. Unless agreed otherwise, acceptance shall take place at our works. If Customer fails to accept the supplies, such supplies shall be deemed to have been delivered in accordance with the contract upon dispatch from our works or warehouse.

### VI. Passing of Risk

1. The risk shall pass to Customer ex-works in accordance with the latest Incoterms. This shall apply also to partial shipments, regardless whether we have agreed to perform other services.

2. If shipment is delayed for reasons for which Customer is responsible, the risk of damage or loss shall pass to Customer from the day the supplies are ready for shipment. We are entitled, however, not obliged, to insure the supplies at Customer's expense against damages caused by breakage, transportation, fire and water.

### VII. Retention of Title

1. The property in all goods supplied shall remain with us until all amounts outstanding to us under the business relationship with the Customer are fully paid.

2. Even in case any of the goods are incorporated in or are processed into other goods before such payment is made, the property in the whole or part of such other goods (as the case may be) shall be and remain with us until such payment has been made.

3. Claims against third parties resulting from re-selling or processing the goods furnished by us will herewith be assigned to us in advance and to the extent of the value of such goods.

4. In the event of breach of contract by Customer, especially default of payment, we shall be entitled, after due notice, to recover the goods, which Customer shall be obliged to surrender. After their return we may dispose of the goods at our own discretion. The exercising of our right of retention of title and the execution of a levy by us shall not constitute rescission of contract.

5. The goods may neither be pledged nor transferred for collateral purposes by Customer. Customer shall inform us immediately of any levy, confiscation or other dispositions by third parties.

### VIII. Liability for Defects and assured Properties

We shall accept the following liability for defects and assured properties with respect to our supplies, as our sole obligation and Customer's exclusive remedy:

a) We shall, at our own discretion, rectify or replace all those parts of the supplies which, within 12 months after commissioning, prove to be unserviceable or significantly impaired in their serviceability as a result of circumstances existing prior to the passing of the risk in particular as a result of defective design, poor materials or deficient construction. We shall be informed in writing without delay if such defects are detected. Replaced parts shall become our property. The right of Customer to make claims arising from defects and guaranteed properties shall expire at the latest 18 months after the passing of risk.

b) In the event we are not willing or not able to rectify or replace the defective goods, or in case rectification or replacement is delayed due to reasons within our control and after Customer has granted us reasonable periods of grace, or in case rectification or replacement fails due to other reasons, the Customer is entitled, at his own discretion, to rescind the contract or to request reduction of the contract price.

c) We accept no liability:

- for minor deficiencies which do not decrease the value or the fitness for purpose according to the contract,

- for defects as a result of faulty assembly or start-up by Customer or third parties,

- for defects caused by neglecting our packing, conservation and storage provisions, or caused by unsuitable or improper use, faulty operation, wear and tear, use of unsuitable utilities etc.

d) Additional claims of Customer, including but not limited to claims for damages not occurring in the supplies themselves, are excluded. This exclusion from liability shall not apply in cases of wilful misconduct or gross negligence on the part of a member of our management board or one of our senior executives and in cases when as a result of a defective supply liability for personal injury and property damage to privately used items has been incurred under the product liability act. Nor shall it apply in the case of failure to comply with an assured property if the object of such guarantee was to safeguard Customer against damages not occurring in the supplies themselves.

### IX. Limitation of Liability

To the exclusion of additional claims, in particular indirect and / or consequential damages, we shall be liable to Customer for damages only if a member of our management board or one of our senior executives commits an act of wilful misconduct or gross negligence. Above exclusion of liability shall not apply in cases of initial or impossibility of performance attributable to us. For injury to a person or persons we shall be liable in accordance with statutory provisions. Any additional liability under the product liability act shall not be affected by this. Also unaffected shall be claims under Section VIII.

### X. Repairs and Services

Services rendered for repairs or other services, including those rendered under the supervision of Customer (e. g. instructing of operating personnel, consulting and performing installation services, start-ups, repairs etc. at Customer's premises ) shall in addition and with precedence be governed by our "Conditions for the Provision of Technical Personnel". For repaired and replaced parts the provisions of Selection VIII shall apply accordingly.

### XI. Partial Invalidity, Place of Performance, Jurisdiction

1. Should a provision of these terms and conditions be invalid this shall not mean that the other provisions nor the whole contract are invalid.

2. The place of performance and for payment shall be Vienna.

3. The exclusive legal venue shall be Vienna. The law of the Republic of Austria to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods shall apply.