

General Terms and Conditions of Business

Sauer Bibus GmbH

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1 General sphere of validity	
1.1	These general terms and conditions of business shall apply for all current and future goods and services provided by our Company. It is emphatically stated that they do not include services rendered under contracts for services.
1.2	General terms and conditions of business differing from, contrary or supplementary to ours shall not become part of our contract, even if we are aware of them, as long as we do not expressly grant our consent to them in writing.
1.3	The latest version of Incoterms in force as laid down by the International Chamber of Commerce (ICC) shall apply for the interpretation of the terms of delivery (FCA, FOB, CIF, ...).
2 Offer, Scope of performance, Period of commitment, Approval requirements	
2.1	Our offers shall always be subject to change without notice. Documents forwarded together with the offer such as diagrams, drawings, plans, statements of weights and measures shall only serve for the purposes of illustration and, in the absence of an agreement to the contrary, they shall only count as approximations, unless they have been specifically marked as being binding. Amendments are to be accepted by the customer provided that they do not exceed tolerances normal within the trade.
2.2	We shall reserve the title and copyrights to cost estimates, drawings and other documents. Third parties must not be allowed access to them and they are to be returned upon request.
2.3	In so far as a contract does materialise so that it is binding, the scope of performance shall be limited, provided that an agreement has not been made otherwise, to those goods. Forwarded documents (Plans, drawings, diagrams.....) shall not constitute an integral part of the contract and are not included in the performance schedule.
2.4	The customer shall be obliged to honour his order for a period of 2 weeks from receipt by us. The contract shall only be entered into when we confirm our acceptance of the order in writing within this period of time or if the goods have been supplied within this period of time.
2.5	In so far as import licences or similar are required for the country of destination, we are to be notified of the data (Date on which licence was granted, period of time covered by licence) when an order is placed with us.
3 Price and Payment	
3.1	The prices quoted are net prices ex Works unpacked and uninsured. Drafts and cheques shall only be regarded as payment after they have been finally credited to our account. Discounting fees and bank charges shall be for the customer's account.
3.2	In the absence of a specific agreement payment is to be made in full within 14 days from receipt of the invoice.
3.3	With the exception of counter claims by the customer which are uncontested or which have been found final and absolute in a court of law, the customer may not offset claims against our accounts
3.4	The customer may only assert a right of retention provided that it is based upon claims relating to the same contractual relationship. If a defect is notified, the customer may only withhold payments to the extent that they are in a reasonable proportion to the asserted claims.
4 Time limits, Default and the Reservation of supply by our own suppliers	
4.1	Delivery periods and delivery dates shall only be binding in those cases in which they have been specifically designated as such by us.
4.2	In so far as the delivery of the goods is delayed for external factors for which we are not to blame, the agreed delivery and completion dates shall be extended by the duration of the disruption caused by these circumstances plus a reasonable start-up time. This shall apply in particular in the event of war, natural catastrophes, civil unrest, sovereign measures, as well as measures imposed in the course of lawful labour disputes in our Company as well as labour disputes in our suppliers' businesses. We shall notify the customer of such delays straight away.
4.3	Our liability for damages incurred as a result of delays shall in all cases be limited to intent and gross negligence. The customer may demand the reimbursement of his proven incurred damages, only however for 1/2 % of the agreed remuneration per week of the delay in delivery, not to exceed a total of 5 % of the agreed remuneration. This shall not apply in cases in which we fail to supply by an agreed fixed date and in cases of malice and intent, death, personal injury or physical harm, when furnishing a performance guarantee and other cases in which liability is compulsory by law.
4.4	We are entitled to withdraw from the contract, provided that in spite of previous agreements with our suppliers we do not receive goods from them. Our responsibility for intent or negligence shall not be affected by the above. We shall notify the customer straight away about the items to be supplied not being available on time and, if we intend to withdraw from the contract, we shall exercise our right to withdraw from the contract straight away. If we withdraw from the contract we shall refund the appropriate counter-performance straight away.
5 Passing of risk and Dispatch	
5.1	In the absence of a specific agreement the dispatch route and method shall be left to our discretion. The costs of dispatch shall be for the customer's account. Dispatch shall be effected uninsured but the goods can be insured at the customer's request and cost.
5.2	In the event that the goods are dispatched, the risk shall pass over to the customer when they are handed over to the haulier or freight forwarder, but no later however, than when the goods leave our works. This shall also apply if the goods leave our stores or are despatched by direct shipment when they leave our works. This shall also apply in those cases in which part deliveries are despatched or if we have agreed to provide other services as well.
5.3	If despatch is delayed as a result of circumstances for which the customer is to blame, risk shall consequently pass over to him on the day on which the goods are ready for despatch. We are however obliged to take out insurance as requested at the customer's wish and expense.
5.4	Irrespective of the rights under No 7.7 (Notification of defects and liability for defects) the customer must also take delivery of the goods in those cases in which defects are extant but which only impair their use as intended by contract to a minor extent.
5.5	In the event that we are not supplied on time or with all items ordered by our supplier and we are not to blame for this delay we shall be entitled to despatch part-deliveries provided that it is reasonable for the customer to accept them.
6 Reservation of title	
6.1	We shall reserve the title our goods until all our accounts created by the business relationship with the customer have been paid in full.
6.2	The customer is obliged to handle the purchased item with care and to secure it against third party interference. The customer must rectify damage straight away at his own cost. The customer has to notify us straight away of damage to, or the destruction of, the purchased item.
6.3	The customer must not pledge the goods or assign them as a security without our consent. The customer shall be obliged to notify us straight away in writing of a levy of execution or other third party interference so that we can take legal action in accordance with Section 771 of the German Code of Civil Procedure [ZPO]. In so far as our legal action is successful but the third party is unable to reimburse us for the costs we incur in and out of court in accordance with Section 771 of the German Code of Civil Procedure [ZPO], the customer shall be obliged to settle these costs.
6.4	The customer is entitled to resell the goods in a proper commercial transaction. He shall assign to us here and now all accounts for the value of our final invoiced amount, (including VAT), from this transaction as well as for all other unpaid final invoiced amounts, (including VAT), accruing to him from a resale to his buyers or third parties. The assignment is regardless of whether the goods have been resold after, or without, processing. We accept the assignment.
6.5	The customer shall be entitled to collect these accounts even after assignment. Our authority to collect the accounts ourselves shall not be affected by this. We have undertaken not to collect accounts for as long as the customer fulfils his payment obligations properly. If the customer falls into arrears with his payments, we may consequently demand that he informs us of the assigned accounts and of the identity of the debtors and provides us with all the information required to collect them, hand over the relevant documents and notifies the debtors that the accounts have been assigned.
6.6	The processing of the goods by the customer shall always be carried out in our name and on our behalf for us as manufacturer within the meaning of Section 950 of the German Civil Code [BGB]. If goods supplied by us are processed together with other goods not belonging to us, we shall consequently acquire co-ownership to the new thing in proportion to the value of the goods supplied by us to the other processed items. The same shall apply if the goods are combined with other goods not belonging to us. At our request at any time the customer shall be obliged to pass over to us information required to pursue our ownership of co-ownership rights.
6.7	If the value of the securities held by us should exceed the total value of the secured accounts by more than 10% overall, we shall, given this, consequently be obliged at the customer's request, to release securities as we choose.
7 Notification of defects, Period of limitation, Warranty for defects, Exclusion of warranty	
7.1	The customer shall have to inspect the goods he receives straight away upon receipt to confirm that the quantity is correct, that they are in proper condition and that the warranted qualities have been satisfied. If there are any defects they are to be notified in writing straight away.
7.2	If the customer fails to notify us of defects, the goods shall consequently be regarded as having been approved, unless the defect is such that it could not have been identified during an inspection. Such a defect is to be notified as soon as it has been discovered.
7.3	The customer's right to assert claims based upon defects shall become time-barred for consumers (Section 13 of the German Civil Code [BGB]) after two years have elapsed from the point in time of the passing of risk. If a consumer was not involved in the transaction, (Section 13 of the German Civil Code [BGB]), the period of time shall be one year from the point in time of passing of risk. This shall not apply in the cases described in Sections 478, 479 of the German Civil Code [BGB] (Rescure open to a business when purchasing consumer goods).
7.4	If there is a defect we shall at our choice rectify it by carrying out a repair or by supplying a replacement free of charge. Replaced parts shall become our property.
7.5	If we supply a defect-free thing for the purposes of rendering subsequent fulfillment, in addition to demanding the return of the defective thing from the customer, we may also demand compensation for the benefits the customer has enjoyed up until the defective thing was exchanged. This shall not apply if the customer is a consumer (Section 13 of the German Civil Code [BGB]).
7.6	In the event that a defect is rectified, the customer shall have to set us a reasonable period of time to carry out subsequent fulfillment. If he refuses to do so, we shall consequently be exempted from liability for defects. We are to be notified immediately in urgent cases in which operational safety is jeopardised and to avert disproportionately large damage.
7.7	Normally we are to be allowed two opportunities to carry out subsequent fulfillment within a reasonable period of time.
7.8	We shall not furnish any warranty for damages incurred as a result of the following reasons: unsuitable or improper use; incorrect installation and / or start-up by the customer or third party; modification as a result of installing parts from other sources; failure to comply with service intervals if these have been recommended by us or by the manufacturer; normal wear and tear, in particular of parts liable to wear and tear; incorrect or negligent handling. A change in programming by the customer or third parties.
7.9	In cases in which a consumer is not involved, used goods shall not be covered by any warranty. The warranty cover for consumers shall be limited to one year from the point in time of the passing of risk for consumers
8 Limitations of liability in the event of compensation being claimed for damages Period of limitation for compensation claims for damages	
8.1	In line with the statutory provisions, we shall be liable without limitation only for intent and gross negligence on our part as well as for breaches of duty resulting from intent and gross negligence on the part of our legal representatives. We shall also be liable without limitation for culpable death, personal injury and physical harm.
8.2	In the event of gross negligence on the part of non-senior staff our liability for property damage and financial loss shall be limited to foreseeable damage typical for this type of contract.
8.3	In the event of ordinary negligence, we shall be liable for property damage and financial loss only in the breach of important contractual duties. Important contractual duties are those contractual duties the fulfilment of which makes it possible for the contract to be carried out at all and upon the compliance with which the customer normally relies and may rely. Our liability for this is limited to foreseeable damage typical for this type of contract.
8.4	We shall not be liable for indirect damage and consequential damage from defects provided that the reproach of intentional or grossly negligent breach of duty does not apply to us, to our senior staff or to our assistants and that we are not culpable of death, personal injury or physical harm.
8.5	In all other cases we cannot be held liable – regardless of whatever legal reason. We shall not rely upon this exclusion clause in those cases in which we are covered by insurance for the claim asserted by the customer.
8.6	The customer's compensation claims for damages not connected with a defect shall become time-barred two years from the point in time at which the damaging act took place. This shall not apply in the event of intent or gross negligence as well as in the event of a culpable death, personal injury or physical harm.
8.7	The above limitations of liability shall not apply in so far as our liability is compulsory under law, in particular for claims based upon product liability as well as when we have furnished a product warranty for the condition of the subject-matter of the invoice, that performance will be successful or for a procurement risk.
9 Final Provisions	
9.1	The law of the Federal Republic of Germany shall apply. The provisions of the UN law on sales (CISG) as well as the conflict of laws law shall not apply.
9.2	It is agreed that the international jurisdiction of the German courts shall apply.
9.3	If the customer is a registered business, legal entity under public law or public-law special fund, the sole place of jurisdiction for all disputes arising from this contract shall be Ulm. The same shall apply if the customer does not have a general place of jurisdiction in Germany or if his place of residence or normal where about are unknown at the point in time at which legal action is taken.
9.4	Should part or all of individual provisions of the contract with the customer, including these general terms and conditions of business, be or become invalid, the validity of the remaining provisions shall not be affected as a result of this. The partially or completely invalid provision is to be replaced by an arrangement which comes as close as possible to the economic intention of the invalid provision given its aim and objective. The same shall apply in the event that there is a gap in these terms and conditions of business.