

General Terms and Conditions item Industrietechnik GmbH

1. General

Our offers are without obligation. The technical data, illustrations, drawings, specifications and prices are not binding unless we have expressly designated them as binding in the individual case.

We reserve the right to retain title and copyright with respect to cost estimates, illustrations, drawings and other documents; they may not be reproduced and made available to third parties without our express written approval. Oral arrangements or statements shall be confirmed by item in written form to be legally valid.

2. Individual Contractual Agreements

Individual contractual arrangements, in particular, specific warranties of features or recommendations for the use of our products, as well as information concerning the length of time necessary and deadlines for repairs shall require the express written confirmation of our headquarters or our relevant competent branch office to be legally valid. Our sales representatives are authorised to procure orders. It is considered that an order has been accepted only when it has been confirmed in written form by either our headquarters or our relevant competent branch office, or after delivery of the products.

3. Prices

Our prices shall be quoted in euros without value added tax. They shall apply ex works, within Germany plus value added tax, and shall not include costs for assembly, start-up and installation (see separate terms and conditions for installation) or packaging, freight, postage and insurance. They shall be calculated on the basis of the costs for wages, material and miscellaneous currently applicable at the date our offer is submitted. In the event these cost factors change prior to the date of delivery, we reserve the right to adjust the prices.

Failing a separate agreement, we reserve the right to choose the route and means of transport, as well as the packaging, at our discretion, but subject to correction. Transport crates shall be credited at 2/3 of the invoiced value in the event of proper freight-paid return within four weeks. Other packages are not taken back.

4. Payment Terms

Our invoices shall become payable at the discretion of the buyer within 10 days of the date of invoice in cash with a 2 per cent discount on the invoice amount including value added tax or within 30 days in cash without a discount. We reserve the right to require other terms (advance payment, payment of 1/3, letter of credit or the like) in specific cases.

In the event the payment deadlines are not met, we shall be entitled – reserving the right to assert further-reaching damage claims in the event the buyer is in arrears – to charge annual interest in the minimum amount of 8 per cent above the current basic interest rate of the European Central Bank (ECB) without a reminder or setting a deadline. For deliveries abroad we may require that a non-revocable and confirmed letter of credit be opened, payable at a bank named by us, or that another equivalent security be provided.

In the event the buyer ceases payment or becomes over-indebted, or if agreed deadlines for payment are not met, the outstanding amount of the purchase price shall become due immediately. The buyer shall not be entitled to set off claims or to withhold property, unless the counterclaims are legally determined, undisputed or have been accepted by us.

5. Retention of Title

Until payment of all of the claims against the buyer to which we are entitled and which arise in the future, we shall retain title to the delivered goods (the provision of a letter of credit is not to be considered payment).

In the event our goods are connected to other objects not belonging to us in such a way, forming a new object, that the buyer acquires sole title to the new object, the buyer shall transfer to us co-ownership to this new object in proportion to the value of the objects connected to each other at the time they were connected. The conclusion of the contract concerning the goods with the buyer shall be deemed an agreement concerning the transfer of ownership. Because the buyer will hold the new product in safekeeping for us, it shall not be necessary for the product to be in our possession.

The buyer shall only be authorised to resell our goods in the scope of proper business operations. For our security, the buyer already at this time assigns to us all claims to which the buyer becomes entitled against a third party due to resale, to the extent of our invoiced amount. The buyer shall continue to be authorised to collect such receivables. We reserve the right to collect the receivables ourselves as soon as the customer becomes in arrears of payment. The same shall apply if an action to open bankruptcy proceedings is filed or payments have been stopped. In this case, the buyer shall hand off the assigned claims and their debtors on request.

6. Delivery

Our delivery periods shall be calculated as of the date we accept the order. The delivery period shall begin to run upon receipt of all documentation to be supplied by the buyer, such as necessary permits, releases, clarification and approval of the plans, compliance with the agreed terms of payment and other obligations, as well as agreement on all technical issues that still required clarification by the parties at the conclusion of the contract.

If these prerequisites are not met in due time, the delivery period shall be extended commensurately. Interruption of operations, strikes, lockouts or a breakdown of important production facilities and machines, delays of delivery of essential raw materials and building materials, delays of transport and all cases of force majeure shall extend the delivery period commensurately, even when these circumstances occur only at our suppliers. The aforesaid shall also apply if the aforementioned circumstances occur during an already existing delay of delivery.

Acceptance testing must be carried out at our premises without delay following the notification of readiness for acceptance. The costs for acceptance testing shall be borne by the buyer. We are permitted to make partial deliveries in reasonable amounts.

The costs for acceptance testing shall be borne by the buyer. Partial deliveries by us shall be permissible to a reasonable extent.

7. Transfer of Risk

All shipments, including any returns – also of partial deliveries – shall be at the risk of the buyer. Even in the case of agreed freight-free delivery, the risk shall transfer to the buyer when the goods are handed over to the buyer or to the buyer's representative at our plant or when the shipment leaves our plant, regardless of the route and the means of transport (internal or external). If the shipment is delayed due to circumstances for which we are not responsible, the risk shall transfer to the buyer as of the date the goods are ready to be sent. This rule also applies for partial deliveries.

8. Liability for Defects

The buyer must examine the goods without delay following delivery if this is feasible in the ordinary course of business and notify us in writing without delay of any defect. If the buyer neglects to notify us, the goods shall be deemed accepted unless the defect was not recognisable during the examination.

If such a defect becomes apparent at a later time, the written notification must be made without delay upon its discovery; otherwise, the goods shall be deemed accepted in consideration of this defect.

If the delivered goods or our services, as the case may be, show a defect for which we are responsible, we shall be entitled, at our discretion, to remove the defect or to deliver new goods or to render new services. If the removal of the defect or the delivery of new goods or the rendering of new services, as the case may be, fails or if we are otherwise entitled to refuse further measures, the buyer shall be entitled to rights pursuant to statutory law. As a rule, the buyer can be expected to accept at least two attempts to remove defects. Rescission of the contract shall be excluded in the event of immaterial breach of contractual duty.

If we are liable under No. 9 of these Terms and Conditions, the buyer's claims for defects shall become time-barred in compliance with statutory law. Furthermore, claims for defects shall become time-barred in compliance with statutory law if the defect is a third-party right in rem on the basis of which it can be demanded that the object is handed over or another right that is entered into the land register or in the case of a building or an object that was used in a building in accordance with its customary use and caused its defectiveness. Otherwise, claims for defects shall become time-barred after one year.

Our liability for defects does not apply for damages due to natural wearing or use, or behaviour within the area of responsibility of the buyer.

9. Limitation of Liability

We shall be liable for our own intentional conduct and our own gross negligence, as well as the intentional conduct and gross negligence of our executive employees.

We shall also be liable for non-compliance with warranties, in the event of assumption of the risk of procurement, in the event of culpable injury to life, body and health and to the scope of liability under the Product Liability Act. We shall be liable on the merits in every event of culpable breach of material contractual duties and in the event of gross negligence of our non-executive employees. This liability shall be limited to compensation in the amount of the typically foreseeable damage.

To the extent our liability is excluded or limited, this shall also apply to the personal liability of our employees, workers, associates, representatives and vicarious agents. The same as stipulated in the previous paragraphs applies for our responsibility regarding the reimbursement of futile expenditure.

10. Final Provisions

Sole jurisdiction and venue for all disputes arising directly or indirectly from the contractual relationship – including cheque and bill of exchange actions – shall be Solingen/Germany. We shall also be entitled to sue at the registered office of the buyer. A transfer of contractual rights and duties by the buyer to third parties shall only be possible with our written consent. The aforementioned terms and conditions form the basis for all transactions with our customers.

Deviating terms and conditions of the buyer shall only be binding on us if this has been separately agreed upon in writing; otherwise, our lack of comment on this point shall be deemed refusal in any case. The buyer acknowledges our terms and conditions with the acceptance of our delivery.

The contractual relations between the parties shall be subject to German law, excluding the United Nations Convention on the International Sale of Goods. Any legal invalidity of individual terms and conditions shall not affect the validity of the other terms and conditions.

Status: September 2009