

General Terms and Conditions for Sale, Payment and Delivery 07/06

Südluft Systemtechnik GmbH & Co. KG

A. General provisions

1. We only deliver and perform in accordance with our following General Terms and Conditions for Sale, Payment and Delivery even when no subsequent express reference is made during ongoing business relations. Alterations to these terms and conditions, particularly diverging terms and conditions of business of the customer, are objected to herewith. Silence on our part regarding diverging terms and condition of business shall not be deemed as consent, namely not even when we deliver without reservation. By accepting our delivery, the customer irrefutably consents to the exclusive applicability of our General Terms and Conditions for Sale, Payment and Delivery.
2. All offers submitted by us are subject to confirmation and are not binding. Orders are only considered accepted upon our written confirmation.
3. All agreements entered into for the execution of this contract shall be set down in writing.

B. Scope of delivery and performance

1. Technical alterations to our order confirmation of the contract are permitted if this is required on the basis of statutory provisions, public directives or in accordance with the state of technology to attain the object of the contract, or hereby neither guaranteed qualities are effected nor the suitability of the contractual item for the contractually assumed use impaired. In so far, the documents such as illustrations, drawing as well as specifications regarding sizes, weight, consumption and performance forwarded to the customer only pertain in general.
2. Safety fittings such as barriers, covering grids, railings, etc. also required on the basis of statutory provisions or public directives, will only be included in as far as this is expressly agreed upon.
3. In any event, even if we have undertaken assembly on a lump sum basis, the following in particular do not form part of the delivery: Earth works, masonry work, lifting equipment, scaffolding, roof flashings, work and materials for the connection of heating, gas, fresh water, sewage and electricity, furthermore installation and commissioning of oil and gas burners, fire extinguishing equipment, electrostatical equipment etc.
4. Any assembly is subject to our specific General Terms and Conditions for Assemblies to which express reference is made.

C. Prices and payment

1. Our prices are ex works including loading at the works but excluding packaging. Turnover tax will be added to the agreed prices at the respective statutory rate.
2. We have the right to increase the agreed prices accordingly if cost increases come into effect after conclusion of the contract, particularly on account of collective wage agreements or price increases of materials, or on account of alterations requested by the customer.
3. Should circumstances become known to us which question the credit standing of the customer, all of our claims become due for payment immediately. In particular, we are entitled, notwithstanding the maturity of received bills of exchange, to demand cash payment against return of the bills of exchange. Our rights accruing from § 321 BGB (German Civil Code) remain unaffected.
4. The customer is not entitled to assert a right of retention or offset against our claims unless the counterclaims are undisputed or recognized by final judgment.

D. Delivery time

1. Adherence to the times for deliveries or performance (delivery times, i.e. delivery dates and delivery periods) requires fulfilment of the contractual duties and obligations of the customer. Delivery periods thus first commence upon the customer's receipt of our order confirmation, however, not prior to the submission of documents, specifications, approvals, etc. to be procured by the customer, and likewise not prior to receipt of an agreed down payment, guarantee, etc., delivery dates are deferred accordingly in these cases.

Alterations or additions to the original scope of delivery or performance agreed upon after conclusion of the contract extend or postpone the original delivery periods or delivery dates appropriately.

The delivery time is observed if by the time of its expiry the delivery item has left the works, or readiness for dispatch is notified. Partial deliveries are permitted.

2. Hindrances to delivery or performance on account of force majeure or as a result of industrial disputes, public interventions, interruption of operations, difficulties with material procurement or energy supply or other unforeseeable, exceptional circumstances which are not our fault, in each case irrespective of whether these circumstances occur at our company or that of our subcontractors, extend the delivery time by the duration of the impediment. This provision does not apply to cases for which we have committed ourselves to delivery times despite these circumstances being foreseen, or when we have not taken possible or reasonable measure to prevent or overcome the hindrance, or when we ourselves are responsible for such impediment.
- In accordance with the foregoing provisions, we are also not liable for the above mentioned circumstances when they occur during an already existing default.

We must notify the customer of the occurrence and anticipated duration of such hindrance without any delay.

In as far as these circumstances make fulfilment of the contract impossible or no longer reasonable for us in economic terms, we can withdraw completely or partly from the contract. The same applies if, as the result of these circumstances, it is not foreseeable when we can fulfil the contract. The customer is not entitled to claim compensation on account of such a withdrawal. If we wish to avail ourselves of the right of withdrawal then we shall notify the customer of this without undue delay after recognizing the implications of the circumstances, also namely when initially and extension of the delivery period or postponement of the deliver date was agreed upon with the customer.

3. If the customer incurs damage due to a delay for which we are liable, the customer is entitled to compensation. The amount of such compensation is limited to 0.75 % for every week commenced of the default, at the most 7.5 % of the contract value. This provision does not affect our liability according to paragraph H of these General Terms and Conditions for Sale, Payment and Delivery.

4. If dispatch is delayed at the customer's request, as of one month after notice of readiness for dispatch he will be charged costs arising from storage, in the case of storage at our works, however, at least 0.5 % of the invoice amount (in the case of part deliveries, the proportional invoice amount) for every month. Furthermore, after specification and ineffectual expiry of a reasonable additional time period, we are entitled to make other use of the delivery item and to supply the customer within a reasonably extended period.

E. Passing of risk and taking delivery

1. The risk passes to the customer at the latest with commencement of loading of the delivery items even when part deliveries are carried out or we have undertaken other services such as shipping costs, for example, or transportation and installation. Forwarding is normally carried out at the cost and risk of the customer.
2. If forwarding is delayed due to circumstances beyond our control, the risk passes to the customer as of the day the delivery items were ready for dispatch.
3. Notwithstanding his rights under paragraph G, delivered items are to be taken by the customer even if they have minor defects.

F. Retention of title

1. Until payment of all claims arising from the business relation with the customer is made in full, we retain title to the delivery item (reserved item).
2. Up until passing of title, the customer shall insure the reserved item against loss, breakage, fire, water or other damage. The customer already assigns all rights ensuing from the relevant insurance contracts and his claims against the insurer to us. We accept such assignment.
3. The customer is neither permitted to pledge nor assign the reserved item as security. In the case of any attachment as well as seizure or other dispositions, the customer shall inform us without undue delay.

In the case of breach of contract on the part of the customer, particularly default of payment, we are entitled to take back the reserved item after reminder. This also applies if the customer is overindebted or suspends payments, or an application if filed to commence insolvency proceedings against his assets, or other substantial deterioration of his economical circumstances occurs. Assertion of retention of title as well as an attachment of the reserved item by us are not deemed as withdrawal from the contract.

4. The client is entitled to resell the reserved item in the ordinary course of business on his normal terms. In the event of resale, the claims of the customer ensuing from resale are already assigned to us up to the amount of our invoice value (including turnover tax). We herewith accept the assignment. The customer is also authorized after the assignment to collect these claims. If the customer defaults, if an application is filed to commence insolvency proceedings, if the customer is overindebted or suspends payments, or other substantial deterioration of his economic circumstances occurs, then the right to resell and the authorization to collect claims expire. In this case, we can furthermore make use of our power, which remains unaffected, to collect the assigned claims ourselves and to demand that the customer notifies his debtors of the assignment. Irrespective of that, we can demand at any time that the customer discloses the assigned claims and the debtors thereof to us, provides all the necessary details for collection and surrenders the appropriate documents.

5. Processing or reconstruction of the reserved item by the customer is always carried out on our behalf. If the reserved item is worked in with other items not belonging to us then we acquire co-ownership of the new item in proportion to the value of the reserved item to the other worked-in items at the time of the work process. Otherwise the same applies to the item created by processing / working as for other reserved items (see above).

6. If the reserved item is thus combined with other items not belonging to us that it becomes an integral part of a single item, then we acquire co-ownership of the new item in proportion to the value of the reserved item to the other combined items at the time of combination. If combination is such that the item of the customer is regarded as the main item, then it is deemed as agreed that the customer assigns us pro rata co-ownership. The customer retains the thus created co-owned item in safekeeping for us. The provisions regarding combination correspondingly apply in the event of mixing or mingling. Otherwise the same applies to new items created by mixing or mingling or combining as for other reserved items (see above).

7. We undertake to release securities due to us in so far as their value exceeds the claims to be secured by more than 20 %.

G. Defects

1. The customer is to check the delivered item carefully and promptly after delivery and to put forward in writing any possible defects without undue delay as soon as recognizable.

2. In the case of faulty delivery or performance the customer is entitled to elimination of the defect or delivery of a faultless item / production of new work (subsequent fulfilment) at our discretion. If we refuse to carry out subsequent fulfilment, it proves to be a failure, is unacceptable to the customer, or does not take place within a reasonable deadline set by him, then the customer has the choice of demanding a reduction, or withdrawing from the contract, or – in the case of a contract for work and services – remedy the defects himself at our expense in accordance with § 637 BGB (German Civil Code). Withdrawal is ruled out if the defect is minor, or building work is concerned. The remedy of defects by the customer is ruled out if we have rightly refused subsequent fulfilment. In other respects we are only liable in accordance with paragraph H of these General Terms and Conditions for Sale, Payment and Delivery.

3. A guarantee for the quality of the delivered item, or of the work to be carried out by us as defined by § 443 BGB (German Civil Code), must be expressly undertaken by us. In particular, such a guarantee is not given by merely mentioning such qualities, e.g. in the case of suitability, weight, consumption or performance specifications.

4. Claims based on defects are ruled out in particular in the following cases: Inappropriate or improper use, defective assembly or incorrect commissioning by the customer or third persons, natural wear and tear, defective or negligent handling – particularly excessive loading, unsuitable fuel, substitute materials, defective building work, unsuitable subsoil, chemical, electrochemical or electrical influences, in as far as we are not responsible for these. If the scope of delivery or performance is altered at the request of the customer after conclusion of the contract, and the quality or suitability of the delivered item, or of the work to be carried out by us as defined by §§ 434, 633 BGB (German Civil Code) is affected because of that, then claims based on defects are ruled out in as far as the negative effects are attributed to the alteration wishes of the customer.

5. Claims of the customer based on defects are subject to a limitation period of one year. This does not apply in the case of a building and work, the success of which involves the rendering of planning or supervision work for such building, or when the delivered item is used for a building in accordance with its customary manner of use and has caused its defectiveness.

6. We can refuse subsequent fulfilment as long as the customer is in default with his duties. A right of retention on account of any delivery defects amounting to up to three times the value of the costs to eliminate the defects remains unaffected hereby.

7. For subsequent fulfilment the customer is obliged to provide services on site to the same extent as for the main contract. Replaced parts are to be returned to us.

H. Liability

1. Damage claims of the customer as a result of all possible breaches of duty irrespective of whether from obligation or tort – particularly with regard to consequential damages (including lost profit) – are excluded. The same applies to claims for the reimbursement of expenses in accordance with § 284 BGB (German Civil Code).

2. Our liability for damages arising from the violation of life, body or health, for claims under the Product Liability Act, for guarantees (excluding consequential damages beyond the guarantee), as well as all foreseeable damages, for which we are blamed intent or gross negligence, remains unaffected. We are liable for property damages as a result of slight negligence, as far as we are capable of obtaining cover in the context of our existing third party liability insurance.

3. For the culpable violation of essential contractual duties as defined by § 307, subsection 2 no. 2 BGB (German Civil Code) we are also liable for slight negligence, however, only for foreseeable damages and only up to EUR 5,000,000.00.

I. Contract documents, property rights

1. As to all contract documents, such as drafts, drawings, calculations and cost estimates, we reserve our title and copyright. They may neither be duplicated nor made available to third persons without our consent. We are exclusively entitled to any rights to patents, utility models, etc. even if these are not yet applied for. Reproduction of our products is only permitted with our written consent.

2. In as far as the scope of delivery or performance includes software, the customer has a non-exclusive right to use the software including its documentation, however, only on one system and the delivery item intended for that purpose. Copyright references are not to be removed or altered, no sublicensing is allowed.

K. Place of performance, place of jurisdiction and applicable law

1. Exclusive place of performance for both parties to the contract is our place of business D-94447 Plattling/Germany. In as far as our customers are merchants or legal entities under public law or public funds, or do not have a general place of jurisdiction in the Federal Republic of Germany, the competent courts for our place of business D-94447 Plattling/Germany are agreed upon as the place of jurisdiction. However, we are also entitled to sue at any other statutory place of jurisdiction.

2. The legal relations with our customers are governed exclusively by the laws of the Federal Republic of Germany. Application of the UN Convention on Contracts for the International Sale of Goods is excluded.

L. Burden of proof, alterations, invalidity clause

1. Existing rules of burden of proof for the benefit of the customer are not affected by these General Terms and Conditions for Sale, Payment and Delivery.

2. Alterations to these General Terms and Conditions for Sale, Payment and Delivery or other contractual agreements must be set down in writing.

3. Should particular provisions of these General Terms and Conditions for Sale, Payment and Delivery become ineffective by law or through a particular contract, the validity of the remaining provisions is not affected by this.