

# Standard Terms and Conditions of Delivery

Konrad Mühlenfeld GmbH & Co. KG

(Stand 01/2016)

## I. Scope

(1) Our deliveries, services and offers shall be based solely on these Standard Terms and Conditions of Delivery. Any standard terms and conditions of business of the customer shall be effective only if they do not conflict with these General Terms and Conditions and the conditions in the order confirmation or if we have given our express written consent to their applying. Our Standard Terms and Conditions of Delivery shall also apply if we make deliveries and/or provide services without reservation despite being aware of terms and conditions of the customer which conflict with or differ from our Standard Terms and Conditions of Delivery.

(2) All arrangements concluded between us and the customer for the purpose of fulfilling this contract shall be set down in writing.

(3) Our Standard Terms and Conditions of Delivery shall also apply to all future business transactions, even if they have not been expressly agreed for those transactions again.

## II. Conclusion of contracts

(1) Our offers shall be without commitment and non-binding, unless we have expressly indicated that they are binding. Depictions and drawings enclosed with our offers, as well as weights specified in them, are to be regarded as approximations.

(2) A contract shall not be formed with the customer until we have accepted the customer's order in writing in the form of an order confirmation. If the order confirmation differs from the customer's order, the scope of the contractually owed services shall be defined by the written order confirmation and its written annexes, unless the customer objects to the content of the order confirmation directly after receiving it.

(3) Documents we have supplied and/or details we have given, such as depictions, drawings, weights and measures, shall be binding only if they are expressly specified as part of the contract or are expressly referred to.

(4) We retain the right of ownership and copyright to drawings, cost estimates and other documents provided to our customers. Our offers and documents shall not be made available to third parties, in particular rival companies, and shall be returned upon request. We always reserve the right to decide whether to accept a contract or not despite having submitted a prior offer.

(5) The documents shall not be disclosed to third parties, including after the contract ends.

(6) If products with conveying properties that are not known to us are to be conveyed with the objects to be supplied or systems under an order relating to the field of conveyancing systems, e.g. with properties such as rolling resistance, a change in the substance when it is heated or moistened or when combined with different components inter alia, a sufficient quantity of the product in question must be provided to us for the purpose of testing. The costs of this testing shall be borne by the customer.

(7) If the customer provides inadequate, incorrect or misleading details about the product to be conveyed or dispenses with prior testing of their conveyance, we shall not be liable for any damage or defects that are attributable to one of these circumstances.

(8) If design documents are provided in full or in detail or the size, dimensions, material properties etc. of the objects to be supplied and/or performance data for the drives are designated by the customer, the customer shall be responsible for the specifications and details. We shall owe proper workmanship in compliance with workshop practices only to this extent. The prices are fixed prices. They include everything which the contractor must undertake to discharge its performance obligation.

## III. Delivery period

(1) The delivery period shall commence when we send our order confirmation, but not before all technical matters relating to the order have been clarified, not before the documents, permits and approvals to be obtained by the customer have been provided and not before an agreed down-payment has been received. Before we can otherwise comply with our delivery and/or

performance obligations, the customer must fulfil its obligations properly and on time, in particular by undertaking all preparatory measures and on-site work and services under this contract. The performance period shall be extended accordingly if the customer does not fulfil its obligations.

(2) The delivery period shall be extended appropriately in the event of measures as part of labour disputes, in particular strikes and lockouts, and if unforeseen events for which we are not to blame occur, insofar as such impediments demonstrably and significantly influence completion or delivery of the object to be supplied or its installation/assembly and were not foreseeable at the time the contract was concluded. This shall also apply if the circumstances occur at suppliers. We shall inform the customer as soon as possible when such circumstances begin and end.

(3) Liability in the event of delay in delivery shall be based on the statutory regulations.

(4) The agreed delivery periods shall be regarded as having been observed

a) In the case of delivery without installation/assembly: when the ready-to-operate consignment has left our company or we have notified the customer that it is ready for shipment.

b) In the case of delivery with installation/assembly: as soon as the object supplied is ready for operation.

So that we can comply with our delivery obligation, the customer must have first fulfilled its obligations properly and on time.

(5) Risk shall pass to the customer no later than when the objects to be supplied are shipped, even if we supply them free domicile, or in the case of delivery with installation/assembly on the day they are ready for operation.

## IV. Prices and terms of payment

(1) The price stated in the order confirmation shall be binding. Statutory value-added tax shall be payable on top of all the prices, unless the goods in question are intended for export and so no value-added tax has to be disclosed on them.

(2) The prices are ex works, excluding packaging. The packaging shall be charged at cost price, but shall not be taken back. Unless otherwise agreed in an individual case, the price shall not include other services and ancillary services of the contractor (e.g. assembly, installation) and any incidental costs (e.g. proper packaging, transportation charges, including any transport and third-party liability insurance).

(3) Changes to the construction of the object to be supplied requested by the ordering party after the order has been confirmed can only be made free of charge if we do not incur any additional costs as a result. We shall charge for changes made at the customer's request without exception. All payments shall be made as agreed, free our payment office, without any deductions and as stated on the invoice.

(4) Unless otherwise defined in the order confirmation, payments shall be due when the invoice is received. The customer shall be in default 30 days after the invoice date without having to be warned by us.

(5) The customer shall have the right to offset its counterclaims only if they have been ruled on finally and conclusively as being justified by a court of law, are not in dispute or have been acknowledged by us. The customer shall be authorised to exercise a right of retention insofar as its counterclaim is based on the same contractual relationship.

(6) The customer shall not have a right of retention of its counterclaims are minor, such as if parts of the documentation are missing.

## V. Reservation of ownership

(1) All the supplied goods shall remain our property until all claims have been settled (retained goods). This shall also apply if payments are made on specially designated claims.

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## VI. Commissioning – Readiness for operation

(1) If commissioning does not result in considerable defects or if the customer does not issue a complaint about defects within seven days of the start of cold commissioning, the system or the system part shall be deemed to be ready for operation. If the customer uses the object supplied or puts it into use, this shall be deemed as declaration that it is ready for operation.

(2) Reservations due to a defect must be reported immediately in writing, stating and describing the defect that is being complained about. Upon request, the customer shall provide video documentation of the normal operating process so as to enable the defect to be examined.

## VII. Warranty – Breach of duties – Period of limitation

(1) Before the customer can assert its warranty rights, it must have fulfilled its statutory duties to inspect the goods and report defects in them. In principle, all deliveries by the contractor shall be inspected as soon as they are received. Any anomalies in the packaging, visible appearance of the objects supplied and the number of packages must be documented immediately (photos, video) and communicated to the contractor by e-mail within two (2) business days. This shall also apply to defects that are discovered later. If there are anomalies or problems that indicate defects during assembly, installation, trial runs or commissioning, they must be suitably documented (photos, video, technical records presenting all the relevant parameters) and communicated to the contractor by e-mail within five (5) business days. If this is not done, the (part) delivery shall be regarded as having been approved.

Upon request, the customer shall provide the contractor will all information that may be of relevance in connection with the observed problems.

(2) If there is a defect within the warranty period and its cause already existed at the time of the passage of risk, we can subsequently remedy the problem at our choice by rectifying the defect or supplying an object that is free of defects. The product complained about shall be sent to us for repair. The costs of the cheapest means of sending and returning the products from/to the customer's domestic address agreed for the original delivery of the products shall be borne by us, if the complaint proves to be justified. The defect shall be rectified by the faulty products being replaced or repaired by us. Defects shall be rectified at the place of installation only subject to separate arrangement. If subsequent remedy fails, the customer shall be authorised at its choice to rescind the contract (rescission) or reduce the delivery price by means of a declaration addressed to us (reduction).

(3) If our operating or maintenance instructions are not heeded, changes are made to the objects supplied, parts are replaced or consumables are used that do not comply with the original specifications, our warranty and liability shall cease if and insofar as one of these circumstances has caused a defect or damage, unless the defect is not causally linked to the changes, and shall cease if regulations on shipment, packaging, installation, handling, use or maintenance are not heeded or if there has been incorrect assembly or commissioning by the customer or third parties. Liability for normal wear and tear shall be excluded. In particular, we shall not be liable for changes to the condition or the mode of operation of our products caused by incorrect storage or unsuitable operating supplies and climatic or other effects. The warranty shall not cover defects that are due to design errors or choice of unsuitable material, if the ordering party has prescribed the design or material despite our prior warning. We shall not assume any liability for parts provided by the ordering party.

(4) The warranty period for claims and rights due to defects in deliveries and services – on whatever legal grounds – shall normally be 24 months and shall commence upon commissioning. It shall end no later than 36 months after handover. These periods of limitation shall also apply to all claims

for damages relating to the defect, regardless of the legal foundations for the claim.

## VIII. Limitation of liability

(1) Unless otherwise specified in these Terms and Conditions of Delivery, we shall be liable for damage and reimbursement of futile expenses within the meaning of Section 284 BGB (hereinafter referred to as "damages") due to the violation of contractual or non-contractual obligations only in the event of intent or gross negligence on the part of our legal representatives or vicarious agents, in the event of injury to life, body or health, due to assumption of a warranty or a procurement risk, due to violation of cardinal contractual obligations, or pursuant to compulsory liability under the German Product Liability Act ("Produkthaftungsgesetz") or other compulsory liability. However, damages for the violation of cardinal contractual obligations shall be limited to foreseeable damage that is typical of the contract, unless we are liable due to intent or gross negligence on the part of our legal representatives or vicarious agents or due to injury to life, body or health or assumption of a warranty or a procurement risk. The above provisions shall not entail a shift in the burden of proof to the detriment of the ordering party.

(2) Further claims of the customer – on whatever grounds – shall be excluded. In principle, we shall therefore not be liable for damage that has not occurred to the object supplied; in particular, we shall not be liable for loss of prospective profits or other indirect financial loss on the part of the customer. Any liability for loss due to outages or stoppages or for the costs of temporary procuring a substitute, such as the costs of a hired car, shall be excluded.

(3) Further claims in the event of malicious non-disclosure of defects or the assumption of a warranty for qualities and/or service life shall remain unaffected.

## IX. Applicable law

German law shall apply to the contractual relationship.

## X. Arbitration – Place of jurisdiction – Place of performance – Passage of risk

(1) All disputes arising in connection with this contract or its validity shall be ruled on finally and conclusively in accordance with the arbitration code of the German Institute for Arbitration (DIS), with any recourse to the courts of law being excluded.

(2) The arbitration proceedings shall be held in Hamburg. There shall be three arbitrators. If the customer has its registered office in a non-German-speaking foreign country, the arbitration proceedings shall be held in English.

(3) Unless otherwise specified in the order confirmation, the place of our registered offices shall be the place of performance.

## XI. Severability clause

If one or more provisions of these Standard Terms and Conditions of Delivery are or become invalid, this shall not affect the validity of the other provisions; the remainder of the concluded contract shall remain effective. The invalid provision shall be replaced by a valid arrangement which corresponds as closely as possible to the intended economic purpose of these Standard Terms and Conditions of Delivery.