



ABS-Armaturen GmbH

...Abwasser-Systemelemente

...Waste water system elements

GENERAL TERMS OF DELIVERY AND PAYMENT

1. Validity of conditions
- 1.1. Deliveries, services and quotations made by the seller take place exclusively on the basis of these general terms and conditions. These therefore also apply to all future business contacts, even if they are not explicitly agreed again. These conditions are assumed to be accepted with acceptance of the goods or services at the latest. Counter-confirmations of the purchaser with reference to his general or sales terms and conditions are herewith opposed.
- 1.2. Variations to these business contacts are only then applicable if the seller confirms them in writing.
2. Quotations and conclusion of contract
- 2.1. The seller's quotations are subject to change without notice and are therefore non-binding. The seller reserves the right to make intermediate sales. Declarations of acceptance and all orders are required to be in writing (per fax if necessary) to be legally valid. The same applies to alterations, supplements and subsidiary agreements.
- 2.2. Drawings, images, dimensions, weights and other performance data are only binding if these have been explicitly and specifically agreed in writing.
- 2.3. The seller's sales employees are not authorised to make verbal subsidiary agreements or verbal assurances which exceed the contents of the written contract.
3. Prices
- 3.1. Unless otherwise stated, the seller will remain bound to the prices contained in his quotation up to 30 days from its date of issue. The prices stated in the seller's confirmation of order are decisive in addition to the legally required value-added tax at the currently valid rate. Additional deliveries and services will be invoiced separately.
- 3.2. Prices are ex-works exclusive of packaging, freight, insurance and the statutory value-added tax at the rate valid at the time of delivery.
- 3.3. If the delivery takes place more than 6 months after conclusion of contract, the seller is entitled to pass on any material price and wage increases which have occurred to the purchaser.
4. Period of delivery and performance
- 4.1. If the seller and the purchaser agree partial deliveries, the purchaser is responsible for delivery costs. This does not apply to the first partial delivery within Germany or to deliveries in Holland or Austria. These delivery costs will be paid by the seller.
- 4.2. Delivery deadlines or time limits which are binding or non-binding must be made in writing. The delivery deadline only begins after receipt of all performances, information and technical information to be handed over by the purchaser. If subsequent revisions are made to the contract, the delivery deadlines will be extended reasonably in so far as the seller has not confirmed the original delivery deadline.
- 4.3. Delivery and performance delays due to acts of God and due to events which considerably hinder the seller in making the delivery or make it impossible - this especially includes strikes, lockouts, official orders etc, even if these occur to the seller's suppliers or their subcontractors - are not the responsibility of the seller even in the case of bindingly agreed time limits and deadlines. They entitle the seller to extend the delivery or service by the period of delay in addition to a reasonable start-up period, or to completely or partly withdraw from the contract due to the parts not yet completed.
- 4.4. If the delay takes longer than 3 months, the seller is entitled to withdraw from the contract with regard to the parts not yet completed after a reasonable period of notice. If the delivery time is extended, or if the seller is freed from his obligations, the purchaser is not entitled to base any claims for damages upon this. The seller may only use the circumstances stated above as a base for claims if he informs the seller of this fact immediately.
- 4.5. Insofar as the seller is responsible for non-observance of bindingly agreed time limits and deadlines, or is delayed, the purchaser is entitled to compensation for delay to the sum of ½ % for each complete week of delay, but, however, to a total of maximum 5% of the invoiced sum for the services and deliveries affected by the delay. Any claims over and above this amount are excluded, unless the delay is due at least to gross negligence or intent on the part of the seller.
- 4.6. The seller is entitled to provide partial services and partial deliveries at any time.
- 4.7. The delivery also includes the delivery packaging itself. The packaging remains at the purchaser. A purchaser's take-back obligation is excluded.
5. Passage of risk
- The risk transfers to the purchaser as soon as the delivery is transferred to the person carrying out transport, and has left the seller's warehouse for the purpose of shipment. If shipment becomes impossible through no fault of the seller, the risk transfers to the purchaser as soon as he is informed of readiness for shipment.
6. Warranty
- 6.1. The seller guarantees that the product is free of fabrication and material faults; the warranty period is 12 months.
- 6.2. The period of warranty commences with the date of delivery. If operation or maintenance instructions provided by the seller are not followed, alterations are carried out to products, parts are replaced or expendables are used which do not comply with the original specification, the warranty becomes invalid.
- 6.3. The purchaser must inform the seller's customer service department of any fault immediately, or at the latest within one week of receipt of delivery item, in writing. Any faults which have not been discovered despite careful investigations within this time limit must be notified in writing to the seller immediately after discovery.
- 6.4. If the purchaser informs the seller that the products do not comply with the warranty, the following regulations apply.
The purchaser is first exclusively entitled to claim for rectification. If rectification is not effective, the purchaser is then entitled to reduction of remuneration or to demand cancellation of the contract.
- 6.5. Any liability for normal wear and tear is excluded.
- 6.6. Warranty claims against the seller can only be made by the immediate purchaser and cannot be passed on.
- 6.7. The above paragraphs finally contain the warranty for products and deliveries and services, and exclude any other warranty claims of any type unless such claims are based on intent or gross negligence on the part of the seller.
7. Retention of ownership
- 7.1. The seller is guaranteed the following securities up to fulfilment of all requirements (including all account balances from current accounts) which the seller is entitled to for any legal reason against the purchaser at present or in the future. The purchaser is entitled to release of the securities listed below so far as their realisable value exceeds the demands by more than 20%.
- 7.2. The goods remain the property of the seller. Processing or reconstruction always take place for the seller as manufacturer, without, however, obligations for him. If the seller's (joint) ownership ceases due to liaison, it is agreed at this point that (joint) ownership of the purchaser is transferred to the purchaser proportionally to value (invoiced value). The purchaser keeps the (joint) ownership of the seller free of charge. Goods on which the seller has claimed for (joint) ownership are hereafter referred to as conditional commodities.
- 7.3. The purchaser is entitled to process conditional commodities in normal business activities and to dispose of them as long as he is not then in delay. Pledging or security transfers are not permissible. The purchaser accepts the assignment. The seller authorises him on a revocable basis to collect the claims assigned to the seller on his account and in his own name. The authorisation to collect may only be revoked if the purchaser does not fulfil his payment obligations correctly.
- 7.4. In the case of access to the conditional commodities by third parties, the purchaser shall indicate the property of the seller and inform him immediately. Costs of intervention are to be charged to the purchaser.
8. Payment
- 8.1. Providing no other arrangements have been made, the seller's invoices are to be settled in German Marks or Euros within 30 days following date of invoice without any deductions.
The seller is entitled, despite any conditions of the purchaser to the contrary, to set off any payments against older debts of the purchaser first of all and is to inform the purchaser about the type of set-offs undertaken. If costs and interest have already been incurred, then the seller is entitled to set off the payment against the costs first of all, then against interest and finally against the principal performance.
- 8.2. A payment is not considered as having been made until the seller has the amount at his disposal. In the case of cheques, the payment shall not be considered as having been made until the cheque has been honoured without any reservations.
- 8.3. If the purchaser should get into default, the seller is entitled to charge interest, calculated as from the time of getting into default, to the amount of the interest rate charged by commercial banks for open current account credits. They may be assessed at a lower rate if the purchaser proves a lower debit.
- 8.4. If the seller becomes aware of circumstances which cast doubt upon the credit worthiness of the purchaser, in particular if cheques are not honoured or the purchaser ceases with his payments, the seller is entitled to accelerate maturity on the entire remaining debt, even if he has accepted cheques. Furthermore in this case, the seller is also entitled to ask for advance payments or provision of security.
- 8.5. The purchaser is only entitled to offset, retention or reduction of the purchase price, even if complaints about defects or counter-claims have been enforced, if the counter-claims have become res judicata or are incontestable.
9. Drawings and alterations to constructions
- The seller reserves all property rights and copyrights with regard to drawings, sketches and other operational documents. These documents may only be copied, used or made available to third parties following the written agreement of the seller. The documents are to be returned on request. The seller assures that documents passed on by him are not encumbered with commercial protective rights of third parties and in so far releases the seller from possible demands from third parties.
The seller reserves the right to make alterations to constructions at any time, he is, however, not obliged to carry out such alterations on products which have already been supplied.
10. Erection and assembly
- The erection and putting into operation of machines and appliances only takes place in accordance with a special order. The afore-going as well as the following terms and conditions shall apply with regard to every kind of assembly, putting into operation or customer service work by the seller, providing no divergent written agreements have been made in the individual case in question.
- 10.1. The purchaser is to take over and make available in good time:
- Breakdown gangs, such as skilled workmen and assistants with the necessary tools in the numbers required
- The necessary objects and materials, as well as scaffolding, cranes and elevators, ladders, welding appliances and all other necessary equipment required for assembly and putting into operation
- Operational power in the required form including the necessary connections to the point of use, heating and general lighting
- sufficiently large, suitable, dry and lockable rooms at the assembly site to keep the machine parts, equipment, material, tools etc. as well as reasonable working and heated recreation rooms for the assembly personnel, including reasonable sanitary facilities in accordance with the given circumstances
- Protective clothing and protective equipment which are necessary for the assembly site as a consequence of special circumstances and are not usual for the purchaser in his branch of trade.
- 10.2. If the erection, assembly or putting into operation is delayed by circumstances on the building site, without this being attributable to a fault of the seller, the purchaser then has to bear all costs for waiting time and necessary travel undertaken by the assembly personnel.
- 10.3. The purchaser is obliged to accept the assembly as soon as it is complete and the work has been terminated. The acceptance procedure involves a check of the system. If the acceptance procedure is delayed without any fault being attributable to the purchaser's side, then acceptance shall be considered as having been made following completion and termination of the work. Following acceptance of the assembly work, the property risk is transferred to the purchaser.
- 10.4. The seller is only liable for the correct handling and erection or assembly of the delivered object; no liability is taken over for the purchaser's auxiliary personnel in connection with the erection or assembly.
11. Restriction of liability
- Claims for damages ensuing from impossibility of performance, positive violation of a claim, culpa in contrahendo and tort are excluded against the seller as well as against his vicarious agents, unless there is a case of intent or gross negligence
12. Compensation on account of non-fulfilment of the contract
- If the purchaser does not fulfil his obligations concerning acceptance of the delivery and service of the seller or if he withdraws from the contract without due justification or gives unjust notice of termination, then the seller can claim compensation, incl. lost profit, from the purchaser.
The amount of the compensation is calculated as being 25 % of the order value of the of the delivery and services ordered by the purchaser. The amount of this abstractly calculated compensation is increased or decreased if the seller can prove damages to a higher extent or the purchaser to a lower extent.
13. Applicable law, Place of jurisdiction, Partial invalidity
- 13.1. The law of the Federal Republic of Germany shall apply with regard to these terms and conditions of business as well as the entire legal relationship between the seller and purchaser.
- 13.2. Providing the purchaser is a businessman within the meaning of the German Commercial Code, the exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be the jurisdiction of the Magistrates' Court / County Court Bad Oeynhausen/Bielefeld.
- 13.3. If a provision in these terms and conditions of business or a provision within the scope of other agreements should be or become invalid, then the validity of all other provisions and agreements shall not be affected as a result. An invalid clause is to be replaced by a valid clause which corresponds to the implied intention and the economic meaning and purpose of the contract.

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