

General Terms of Sale and Delivery of GROSS Apparatebau GmbH

§ 1 General

1. The following terms and conditions are exclusively applicable for all quotations submitted by us and for all contracts entered into with us. Any price lists handed in or dispatched by us are to be regarded as quoted prices without commitment. The customer's purchasing terms and conditions apply only if they are acknowledged by us. Such acknowledgement is to be effected in writing. No verbal subsidiary agreements have been entered into. Our terms and conditions of sale are also applicable if we effect delivery to the customer without reservation in the knowledge of terms and conditions of the customer which oppose or deviate from our terms and conditions of sale.
2. If we send the customer documents relating to a machine, this transmission represents only a request to the customer to submit us an offer. We reserve the right to make alterations in the course of technical progress. Subject to prior sale. A contract does not become effective until our confirmation of order or the delivery of the goods.

§ 2 Prices and Payment

1. Unless otherwise specified in our confirmation of order, our prices are in Euro, net ex works.

These prices include in particular turnover tax, costs for customs and excise, insurance, transport, unloading and packaging. Value added tax will be calculated separately at the statutory rate on the date of invoicing.
2. Commissioning – unless specified in the confirmation of order – and installation and repair contracts require separate arrangements.
3. Any consultancy and services requested by the customer over and above the agreed scope of order can be invoiced separately.
4. We reserve the right to dispatch goods cash on delivery or cash before delivery. In the event of default of payment on the part of the customer, interest will be charged at the rate of 8% acc. to § 288 sub-section 2 of German Civil Code above the Federal Bank rate. We are however entitled to prove a higher damage caused by delay.
5. If, after conclusion of the contract, a significant deterioration of the customer's financial condition is recognized which endangers our claims for payment, or if the customer makes default, we may hold back outstanding deliveries and demand immediate payment of all invoices, even of those which are not already due, as well as advance payments and provision of security for future deliveries. If the customer cannot raise this advance payment or the security within a reasonable period of time fixed by us, we may withdraw from the contract.
6. Payments by way of bill of exchange or cheque will only be accepted as payment and by special agreement and only by eligibility for rediscount as consideration for the costs payable by the customer in cash, in particular discounts, bills, banking charges and stamp duties.
7. The customer is only entitled to setoff rights if his counterclaims have been legally established and are undisputed or have been acknowledged by us. Any possible lien can only be exercised if a counterclaim results from the same contractual relationship.

§ 3 Delivery and Delivery Periods

1. If any delivery date is exceeded, the customer is entitled to set a reasonable time extension (at least four weeks) and may, upon fruitless expiry of this term, withdraw from the contract. The customer is entitled to claim for damage only in the scope of § 5 sub-section 5 of the present contract.
2. Cases of force majeure and unforeseen events, in particular production or delivery failures, either at our company or that of our suppliers, release us from our obligation for the duration of the interruption and during an appropriate initial period and to the extent of their effect. During this period, the customer can neither cancel the contract nor claim damage, unless the failure is caused by us deliberately or results from gross negligence. This also applies if the failure occurs during an existing delay. If such events have an effect on the performance capacity, we are entitled to adapt the contract accordingly or, if the complete discharge is not economically tenable, to cancel the contract either wholly or in part.
3. Shipment in the case of "ex works" delivery is effected for the customer's account and risk.
4. At the request of the customer, we will have the consignment covered by transport insurance for which the customer shall bear any costs incurred.

§ 4 Reservation of ownership

1. We remain the owners of the goods supplied by us until all payments due to us, including future debts arising from the business relationship with the customer, have been discharged in full.
2. On default of payment, the reservation of ownership entitles us to recover the reserved goods without prior notice. In this case, the customer is obliged to surrender the goods. A previous withdrawal from the contract on the part of the vendor is not necessary. The recovery of the reserved property is not considered a withdrawal from the contract, even if this is not expressly indicated.
3. The customer is obliged to treat the purchased article with care and is in particular obliged to arrange for adequate insurance against fire, water-damage and theft for replacement value of the same at his own expense.
4. The customer is entitled to resell the object of supply in the ordinary course of business, provided that the operating instructions of GROSS belonging to the respective object of delivery have always been delivered; however he herewith assigns to us all claims against his purchasers or third parties for the final invoiced amount (incl. value added tax) accruing from the further sale to his buyers or third parties, and independent of whether the object of supply was resold with or without it being processed. The customer remains entitled to collect this claim, even subsequent to the assignment. The right of the customer to resell or collect claims for payment shall extinguish as soon as he gets into arrears for even one invoice or verges on insolvency.
5. The customer shall always perform any processing or machining and any transformation of the goods on our behalf without any obligation being incurred by us as a result.

If the goods are permanently connected to any other object, we shall acquire co-ownership of the new object in proportion to the invoice value of the goods to the other connected objects applicable at the time of such connection. However, even though we acquire co-property on the new object, we shall only be held liable for claims caused by our goods within the scope of §§ 5 and 6. If any claims are raised against us directly by a third party who has purchased the goods from our customer, we have a right to exemption towards our customer, in so far as we would not be liable within the scope of §§ 5 and 6 towards him.

6. In the case of cheque/bill of exchange procedures, our reservation of ownership shall not extinguish until the customer has discharged all his liabilities to us in full.
7. Neither the discontinuance of any individual claims in a current account nor the settlement of an account current shall invalidate our retention of title in all stages. If any claim assigned to us from the resale of goods is incorporated by the customer into an existing account current relationship with his customers, the account current claim is to be assigned to us to its full amount. Upon settlement, this amount will be replaced by the acknowledged balance constituting our original claim.

8. We undertake to release the securities to which we are entitled insofar as their value exceeds the claims to be secured by more than 20%, unless these have been discharged.

§ 5 Warranty

1. The claims of the customer which are based on warranty are statute-barred after one year starting with the delivery of the object of supply.
2. The warranty rights of the customer are conditional on the customer's having properly fulfilled his examination and complaint obligations in accordance with §§ 377, 378 HGB (German Uniform Commercial Code) or with Art. 38, 39 of UN purchasing laws. Written notice of detectable deficiencies must be sent to us without delay, however at the latest within 10 days of receipt of the goods. The receiving date of such notification by us is decisive.
3. We are liable for defects to the extent that the delivered article will be repaired or replaced at our option if it has provably been rendered useless or its serviceability impaired as the result of any circumstance occurring prior to the transfer of risk. Replaced parts are our property. We shall exercise this option right within two weeks starting with the assertion of the respective rights on the part of the customer. Otherwise the option right shall be exercised by the customer.

If any repair or replacement delivery is not effected within an appropriate term, taking into account our delivery facilities, the customer is entitled at our option to a cancellation of the contract or to a reduction of payment (abatement). We are only liable for substantial outside products following previous judicial recourse of the supplier of the outside product. We assign our warranty claims against the supplier of the outside product to the customer.

4. The purchaser shall give us the necessary time and opportunity to effect all repairs and replacement deliveries which seem necessary at our discretion, otherwise we shall be released from the warranty responsibility.
5. In the event of intention or gross negligence on our part, or on the part of our legal representatives and executives, regardless of the cause in law whatsoever, we shall be liable according to the statutory provisions unless no further restrictions result from the following provisions.

In the event of culpable violation of essential contractual obligations as well as in the event of gross fault and intention of simple persons employed by the debtor in the performance of his obligations, our liability is restricted to compensation for damage which can be typically foreseen. Any further claims of the customer - regardless of the cause of law - are excluded.

6. No liability is assumed in particular for damages caused as a result of the following:
 - a) in the event of inappropriate or improper use, of non-compliance with our prescribed instructions, of non-observance of the supplied GROSS operating instructions, faulty working drawings of the customer, incorrect assembly or operational start-up by the customer or others, natural wear, incorrect or negligent treatment, improper maintenance, unsuitable operating materials, imperfect structural operations, unsuitable foundations, chemical, electrochemical or electrical influences, unless we are responsible for them;
 - b) in the event of improper rework by the customer himself or by a third party for any resulting consequences;
 - c) in the event of changes to the object of supply by the customer or a third party without our previous consent for any resulting consequences;
 - d) in the event of the object of supply being sold to a third party without including in the scope of supply the GROSS operating instructions relating to the respective object of delivery for any resulting consequences.
7. Our non-liability does not extend to claims in accordance with §§ 1, 4 of (German) product liability legislation. To the extent that our liability is otherwise excluded or limited, this also applies to the personal liability of our employees, workers, staff members, representatives and vicarious agents.
8. If we are held liable in a case of § 5 sub-sections 5-7 by a third party although our liability is excluded towards the customer who has resold the goods to this third party, we have a right to be indemnified by our customer against the claims of this third party.

§ 6 No liability for defects on used goods

The sale of used goods is effected under exclusion of any warranty, provided that the customer is an entrepreneur within the meaning of § 14 BGB (German Civil Code). For other customers, the sale of used goods is effected as contractually arranged.

§ 7 Samples, drawings, tools

We retain our title and copyright to all illustrations, drawings, calculations and other documents; it is not permitted to make these available to third parties. This applies especially to any written documents which are designated "confidential"; our express written consent must be obtained before these are passed on to third parties. This is also applicable if costs were calculated for tooling to be manufactured on commission.

§ 8 Concluding provisions

1. Assurances and understandings with our representatives and employees require our express written confirmation to become effective.
2. The customer may only assign his rights from this contract to others with our consent. The same applies for the assignment of claims against us.
3. Our legal relations to the customer are governed by German law.
4. Unless otherwise arising from the confirmation of order itself shall be the place of performance for both sides of these legal relations.
5. Provided the purchaser is a general merchant, a legal entity in public law or a separate estate under public law, the district court or county court Heilbronn is accepted as the competent court for all contractual and non-contractual disputes. We are, however, also entitled in individual cases to take action at the commercial domicile of the customer.
6. If any of the above provisions should be wholly or partly ineffective, this shall not affect the effectiveness of the remaining provisions. The parties undertake to agree on an alternative provision which will as closely as possible fulfil the commercial purpose of that clause, which may possibly be omitted.

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