

## EXPERT-TÜNKERS GmbH

Seehofstr. 56-58, D - 64653 Lorsch

### General Terms and Conditions of Sale and Delivery

#### I. General Scope of Application

1. Our Terms and Conditions of Sale and Delivery shall apply exclusively: we do not recognise any terms and conditions of the Customer that conflict with or differ from our Terms and Conditions of Sale and Delivery unless we have expressly agreed in writing to their application. Our Terms and Conditions of Sale are applicable even if we deliver unconditionally to the Customer in the knowledge that the terms and conditions of the Customer conflict with or differ from our Terms and Conditions of Sale.
2. Our Terms and Conditions of Sale shall also apply to all future transactions with the Customer.

#### II. Offer

1. Initial offers shall be submitted free of charge, as a rule. Additional offers and design work shall only be free of charge if the delivery contract is concluded with legally binding effect and remains valid.
2. The documents belonging to the offer, such as diagrams, drawings, weight and measurement data, only apply approximately unless they are expressly referred to as binding. The Supplier reserves the rights of ownership and copyrights to quotations, drawings and other documents; they may not be made available to third parties. The Supplier is obliged to make plans marked confidential by the Customer available to third parties only with its consent.

#### III. Scope of delivery

The written order confirmation of the Supplier governs the scope of the delivery. Any collateral agreements or modifications are subject to written confirmation by the Supplier. Packaging is an integral part of deliveries and will not be taken back.

**Call-off orders** shall only be concluded for a maximum of one year. If delivery is not taken of the goods ordered with a call-off order within this period, this call-off order shall become void; in such a case, we shall cancel this call-off order without further notice and an additional charge shall be levied for the goods not purchased by then, which will be based on the list prices or the normal discount rates.

**The cancellation** of orders shall only be permissible with our consent and against reimbursement of the loss we have incurred. Should an order be cancelled, we reserve the right to charge cancellation costs for the material that has been processed and can no longer be otherwise utilised and for construction work which has already been carried out. We reserve the right to assert further loss. We may correct obvious mistakes and errors in offers, order confirmations or invoices. We reject any legal claims on the basis of wrongly supplied information which obviously conflict with our other sales documents.

**IV. Payment** shall take place, unless other agreements have been reached, within 14 days with a 2% discount or 30 days net after the invoice date. If the orders are for equipment (units) with a total price exceeding € 5,000 per item, payment must be furnished as follows:

- 1/3 upon receipt of our order confirmation,
- 1/3 upon notification of readiness for dispatch,
- 1/3 30 days after the invoice date.

Assembly costs are payable immediately without any deduction.

If the period allowed for payment is exceeded, interest of 3% above the respective base rate will be charged. Discount charges will be borne by the Purchaser. The right to assert further damage caused by default is reserved. We assert the right to accept bills; this shall occur without an obligation for the timely filing of the protest and only subject to payment of collection expenses. Deliveries to new customers will only take place against payment in advance or cash on delivery up until the presentation of satisfactory references. Customers who do not comply with the terms of payment must expect cash on delivery consignments in the case of further deliveries. We are not obliged to carry out any further deliveries pertaining to any other contract prior to the payment in full of due invoice amounts including interest on arrears. If the Customer defaults on a due payment or if unfavourable information comes to light about the Customer's financial circumstances, we may for all still outstanding deliveries, under cancellation of the term of payment, demand cash payment prior to delivery or guarantee of the purchase price and immediate payment of all invoice amounts not yet due, even if bills exist therefor.

**Repair costs** are payable net immediately.

The withholding of payments due to any counterclaims by the Purchaser not recognised by the Supplier is not permitted, nor is the offset against such claims.

#### V. Delivery period

1. The term of delivery shall begin upon dispatch of the order confirmation, but not before the Customer has submitted the requisite documents, permits, releases and receipt of any agreed down payments.
2. The term of delivery shall be considered met if the goods to be delivered have left the factory or the readiness for dispatch has been confirmed before this expires.
3. The term of delivery shall be extended appropriately should unforeseen obstacles arise which are beyond the Supplier's control – regardless of whether they occur at the Supplier's factory or at the premises of its subcontractors – e.g. operational disruptions, defective products, delays in the delivery of important raw and building materials, insofar as such obstacles can be proven to exercise a considerable influence on the production or delivery of the goods. The Supplier shall not be responsible for the aforementioned circumstances even if they arise during an already existing delay. The Supplier shall inform the Purchaser of the beginning and end of any such important obstacles as soon as possible.
4. If dispatch is delayed at the Customer's request, the Customer shall, starting one month after notification of readiness for dispatch, be charged the costs incurred from storage, and in the case of storage at the Supplier's factory at least half a percent of the invoice amount for each month. However, after the setting of and unsuccessful expiration of a reasonable time limit, the Supplier shall be entitled to otherwise dispose of the delivery item and supply the customer within a reasonably extended time period.

5. Observance of the term of delivery is subject to the Customer fulfilling its contractual obligations.

#### VI. Taking delivery and passage of risk

1. The risk shall pass to the Customer at the latest upon shipment of the delivery items; this shall also apply in the case of part shipments or if the Supplier has assumed further obligations, e.g. the cost of transportation or delivery and installation. At the request of the Customer the Supplier shall insure the consignment against breakage, damage in transit and fire and water damage at the Customer's expense.

Should the consignment be delayed due to circumstances for which the Supplier is not responsible, the risk shall pass to the Customer from the day of the readiness for dispatch; however, the Supplier shall be obliged to take out the insurance that the Customer demands at the Customer's request and expense.

3. The Customer shall take delivery of the supplied goods, even if they are slightly defective, regardless of the rights arising from Section VIII.
4. Part deliveries are admissible.

#### VII. Retention of title

The Seller retains title to the delivered goods until full payment is made of the purchase price and all preceding and future claims that the Seller owns or acquires vis-à-vis the Buyer from the business relationship. Prior to payment in full – the same applies to the current account and overall retention of title if the retention of title is extended – the Buyer may not pledge, transfer as a guarantee or assign the claim within the scope of a factoring agreement without the consent of Tünkers. Tünkers must be notified of a levy of execution by a third party immediately.

Tünkers shall especially retain title until the Buyer has released Tünkers from any bill of exchange liability entered into in its interests. In the case of supplier's invoices, the goods to which we have retained the title shall be deemed security for our claim.

If the goods are processed into a new product by the Buyer, the processing takes places for Tünkers. Acquisition of title by the Buyer according to section 950 of the German Civil Code (BGB) is excluded.

If processing takes place with other goods that do not belong to Tünkers, Tünkers shall acquire joint title to the new item in proportion to the value of the item it supplied compared with the other goods at the time of processing. The new item shall be deemed reserved goods within the meaning of these Terms and Conditions.

The Buyer shall herewith already assign to Tünkers its claims arising from the resale of the reserved goods to a sum that corresponds to the value of the reserved goods.

Should the resale be carried out in combination with other goods that do not belong to the Seller at an all-inclusive price, the Buyer shall herewith already assign to Tünkers its claims arising from the resale to the sum of the amount that corresponds to the value of the reserved goods.

If the reserved goods are incorporated in the land of a third party as an integral part of the said land, the Buyer shall herewith already assign to the Seller the area claim accrued to it vis-à-vis third parties or vis-à-vis the party whom it concerns to the sum that corresponds to the value of the reserved goods. If Tünkers holds joint title to the reserved goods, the assignment shall extend to the amount that corresponds to the proportionate value of the joint title of Tünkers. The value of the reserved goods in the sense of these Terms and Conditions is the invoiced value of the Seller plus a security surcharge of 20%. The Buyer shall be revocably entitled to collect the claims resulting from a resale. Upon request the Buyer shall give the Seller the names of the debtors of the assigned claims and notify them of the assignment.

The Seller shall undertake to release the security that exceeds the value of the claims to be secured by more than 25%.

With the full payment of all claims of the Seller arising from the business relationship the title to the reserved goods shall pass to the Buyer. At the same time the Buyer shall acquire the claims arising from the sale of the reserved goods.

**VIII. Drawings** The measures and weights specified in our drawings are non-binding. We reserve the right to make design modifications.

The copyright and the rights arising from section 7 of the German Patent Law and section 1 of the German Designs Act to our drawings and devices along with the relevant documentation shall remain with us. They shall be entrusted to the recipient only for personal use for the purpose of our respective offer and may not be duplicated in an abridged form or made available to third parties without our express written approval. In the event of illegal use, we shall point out sections 1, 15, 36 of the German Copyright Law, sections 1, 3, 15, 31 to 33 of the German Art Protection Law and sections 17, 18, 19 of the German Law Against Unfair Competition.

Drawings and the relevant documentation shall be returned to us without delay in the event that an order does not come about after a decision has been taken.

#### **IX. Liability for defects of delivery**

The Supplier shall be liable for defects of delivery, including the absence of expressly assured characteristics, as follows to the exclusion of any further claims:

1. All those parts which are provenly unusable or considerably impaired in their usability within 6 months (in the case of multiple shift operation within 3 months) after start-up due to a circumstance occurring prior to the transfer of risk, especially due to a faulty design, inferior building materials or defective delivery, shall be repaired or supplied again free of charge at the reasonable discretion of the Supplier. The discovery of such defects shall be reported to the Supplier in writing without delay. Replaced parts shall become the property of the Supplier and shall be returned to us upon request.

If the dispatch, installation or start-up are delayed without the Supplier being to blame, the liability shall expire at the latest 12 months after the transfer of risk.

In the case of outside products, the liability of the Supplier shall be limited to the assignment of the liability claims to which it is entitled vis-à-vis the Supplier of the outside product.

2. The right of the Customer to assert claims arising from defects shall become statute-barred in all cases in 6 months from the date of the punctual notice of defects, but at the earliest upon expiry of the warranty period.

3. No guarantee will be given for damage occurring for the following reasons: unsuitable or improper use, defective assembly or start-up by the Customer or third parties, natural wear and tear, defective or negligent handling – especially excessive strain – unsuitable operating resources, substitute materials, defective building work, unsuitable foundation soil, chemical, electrochemical or electrical influences, unless they are attributable to negligence on the part of the Supplier.

4. The Supplier shall provide the necessary time and opportunity to carry out all the repairs and substitute deliveries that appear necessary at the reasonable discretion of the Supplier by agreement with the Supplier, otherwise the Supplier shall be released from the liability for defects. The Customer shall only be entitled to remedy the defect itself or have it remedied by third parties and demand appropriate remuneration of its costs from the Supplier in urgent cases where operating safety is at risk, of which the Supplier has to be notified immediately in writing, or if the supplier defaults on remedying the defect.

5. Of the direct costs arising from the repair or substitute delivery, the Supplier shall – if the claim turns out to be justified – bear the costs of the replacement item excluding shipment and dismantlement and installation. The Customer shall bear the remainder of the costs.

6. The same guarantee shall be furnished for the replacement part and the repair as for the delivery item. The time period for the liability for defects in the delivery item shall be extended by the duration of the stoppage caused by the work carried out to remedy the defect.

7. The Supplier may refuse to remedy defects as long as the Customer does not fulfil its obligations.

8. Liability for the resulting consequences shall be cancelled due to any improper modifications or repair work carried out by the Customer or third parties without the prior approval of the Supplier.

9. Other claims by the Customer, especially a claim to the reimbursement of damage not occurring to the delivery item itself are, insofar as is legally admissible, excluded.

**X. Liability for indirect damage** The Supplier shall not be liable for indirect damage due to a defective delivery, e.g. loss of production, lost profit and additional use of materials, unless in cases of intent or gross negligence.

**XI. Repairs.** The supply of repair devices must take place free of charge. If shipments are not free of charge, acceptance may be refused.

#### **XII. Right of the Customer to withdraw**

1. The Customer may withdraw from the contract if it finally becomes impossible for the Supplier to carry out the full performance prior to the transfer of risk. The Customer may then withdraw from the contract if, when ordering items of a similar type, the supply of part of the delivery becomes impossible as regards quantity and the Customer has a justified interest in refusing a part delivery; if this is not the case, the Customer may reduce the counter-performance accordingly.

2. If performance default exists within the meaning of Section IV of the Terms and Conditions of Delivery and the Customer grants the Supplier in default a reasonable extension of time with the express declaration that it will refuse to accept performance after the expiry of this period and the time extension is not complied with due to the Supplier being at fault, the Customer shall be entitled to withdraw.

3. If the impossibility occurs during the default of acceptance or due to the Customer being at fault, the Customer shall be obliged to render a counter-performance.

4. The Customer shall also be entitled to withdraw if the Supplier allows a reasonable extension of time made available to it to remedy or improve a defect for which it is responsible within the meaning of the Terms and Conditions of Delivery to expire abortively through its negligence. The reasonable extension of time shall not begin until the defect and the representation obligation of the Supplier has been recognised or proven.

5. All other claims by the Customer, especially for repudiation of contract, termination or reduction or to the reimbursement of damage of any kind, even such damage which has not occurred to the delivery item itself, are excluded.

#### **XIII. Right of the Supplier to withdraw**

In the event of unforeseen events within the meaning of Section IV of the Terms and Conditions of Delivery, insofar as they substantially change the economic importance or content of the performance or have a considerable effect on the Supplier's operations, and in the event of the impossibility of execution subsequently coming to light, the Supplier shall be entitled to withdraw from the contract in whole or in part.

The Customer has not right to compensation due to such a withdrawal. If the Supplier wishes to make use of the right of withdrawal, it shall inform the Customer thereof without delay after realising the implications of the event, even if an extension of the term of delivery had been initially agreed with the Customer.

#### **XIV. Place of jurisdiction and place of performance**

In the case of all disputes arising from the contractual relationship, legal proceedings shall be instituted at the court which is responsible for the Supplier. The Supplier shall also be entitled to institute legal proceedings at the principal place of business of the Customer.