

GENERAL TERMS OF SALE AND DELIVERY (April 2004 Rev. 1)

1. Scope of Application

- (1) These General Terms of Sale and Delivery (hereinafter "General Conditions") apply exclusively to all sales by Energietechnik Essen GmbH (hereinafter "ETE"). Any conflicting and/or supplementing terms or conditions of the Buyer are not binding upon ETE. This applies also, if ETE shall not expressly object to such terms or conditions or if ETE shall fulfil its obligations without objecting to such terms or conditions.
- (2) The General Conditions together with the document of which they form a part, contain all relevant terms and conditions of the agreement entered into with the Buyer. No additional agreements exist.
- (3) These General Conditions apply also to all future business with the Buyer.

2. Order

- (1) Any offers made by ETE are non-binding. They merely constitute an invitation to the Buyer to submit an offer himself.
- (2) Public statements made by ETE, or the producer of the delivered goods or his assistants, in particular while promoting or labelling the goods, are not descriptions of the quality of the goods or a guarantee hereof.

3. Prices

- (1) The prices designated in the confirmation of order shall be firm and binding. All prices do not include VAT. In the event, that the costs of ETE shall increase after four weeks from the confirmation of order and prior to delivery due to increases of, e.g. increases in raw material and wages, public charges or other costs beyond ETE's control, ETE shall be entitled to adapt the prices accordingly. ETE will provide the Buyer with evidence for such cost increases upon request.
- (2) In the event of deliveries to other EC member states the Buyer shall prior to delivery inform ETE of his VAT identification number, under which he carries out the income taxation within the European Union. Failing this, he shall pay for ETE's deliveries the VAT amount owed by ETE in addition to the agreed purchase price.

4. Terms of Payment

- (1) Where the contract provides for payment by Letter of Credit ETE is under no circumstances obliged to perform the contract before receiving the Letter of Credit.
- (2) Payments are due and payable within fourteen days from the delivery without deduction. Thereafter the Buyer will be liable for default of payments pursuant to sec. 286 subsec. 2 number 2 German Civil Code. The legal consequences will be determined pursuant to section 288 German Civil Code.
- (3) In the event that the Buyer fails to meet his payment obligations ETE is entitled to suspend further performance either in whole or in part until payment of the amounts due or provision of security.
- (4) In the event that after the conclusion of the contract the Buyer's financial situation deteriorates substantially which endangers the payment of the agreed price, e.g. suspension of payment by the Buyer or filing of a petition of the commencement of insolvency proceedings upon the assets of the Buyer, ETE shall be entitled to suspend performance until payment in advance or provision of security. If after a reasonable period of time the Buyer shall have failed to pay in advance or provide security, ETE is entitled to rescind the contract.
- (5) Set-off or retention rights of the Buyer are only given if his counterclaim is undisputed or has been confirmed by a final court decision.
- (6) The Buyer is not entitled to assign any rights or claims under this contract to a third party without ETE's prior written consent.
- (7) ETE shall have the right to set off any claims which the Buyer may have against ETE or companies in which Georgsmarienhütte Holding GmbH, Georgsmarienhütte, has a majority whether directly or indirectly against all claims which ETE has against the Buyer.

5. Delivery and Default of Delivery

- (1) Time limits, in particular delivery dates stipulated by ETE, are only binding if expressly confirmed as binding in the confirmation of order. For the purpose of adherence of delivery dates placing the goods at the plant shall be decisive. ETE is under no circumstances obligated to meet confirmed delivery dates if any final specifications, information or cooperation by the Buyer, in particular issuance of the Letter of Credit, adduction of domestic or foreign certificates or import licence which are required for the delivery of the goods, are received by ETE after dispatch of the confirmation.
- (2) Periods of delivery shall be reasonably extended in the event of impediments beyond the control of ETE, in particular short falls in energy supply, transport impediments, embargo impositions, disturbances of operation, discontinuance of operation, strikes, industrial actions, deficiencies or delays of deliveries by sub-suppliers. If ETE is unable to perform its obligations due to such impediments the order shall be deemed cancelled. ETE will inform the Buyer of such impediments without undue delay.
- (3) ETE is entitled to make partial deliveries.
- (4) In the event that the Buyer fails to accept the due delivery, ETE is, without prejudice to any other remedies, entitled to store the goods at the Buyer's risk and recover from the Buyer any extra expenses (such as additional storage charges) incurred due to the Buyer's failure of acceptance.

6. Measures, Weights, Quality

Deviations from measures, weights and quality are admissible within the limits of DIN standards or the established practice. The weights are established on ETE's calibrated scales and shall be decisive for the purpose of invoicing. The attestation of weight shall be carried out by submission of the weighing record. If single weighing is not usually carried out the overall weight shall be decisive. Deviations from the calculative single weights shall be attributed to them proportionally.

7. Packing, Packaging Costs, Transport Damages

- (1) As far as customary in the trade ETE will deliver the goods packed and protected against oxidation. ETE retains the choice of appropriate packing.
- (2) Any costs of packing shall be borne by the Buyer. The packing will not be taken back by ETE.
- (3) The Buyer shall report any transport damages to ETE and the Transport Company without undue delay and shall have the facts of the case recorded.

8. Transfer of risk, Place of Delivery, Place of Payment

Unless otherwise agreed by the parties, all deliveries shall be made ex works (EXW) ETE Westendstraße 15, 45143 Essen, Germany in accordance with Incoterms as amended and in effect at the time of contract conclusion.

9. Warranty

- (1) The Buyer must examine the goods without undue delay following delivery by ETE and notify a defect to ETE without undue delay in writing. If the Buyer fails to notify ETE the goods are deemed approved unless there is a defect which at the time of the examination was not detectable. Where such a defect becomes apparent at a later time notice must be made without undue delay following detection. Otherwise the goods are deemed approved with regard to this defect.
- (2) If the delivered goods should be defective, ETE may remedy the defect or effect a substitute delivery at its own discretion (subsequent performance). If ETE fails to subsequently perform or subsequent performance is unacceptable to the Buyer, the Buyer shall be entitled to

proportionate reduction of the purchase price or rescission of the contract. Additional claims of the Buyer are excluded, notwithstanding any rights pursuant to art. 10 (liability). Any claims of the Buyer pursuant to section 478, 479 of the German Civil Code (recourse within the supply chain) remain unaffected.

- (3) The warranty period shall be one year from the delivery.

10. Liability

- (1) ETE shall only be liable for damages, if
 - (a) liability is mandatory under the applicable law, e.g. under the Product Liability Act or in case of injury to life, body or health,
 - (b) ETE has granted a guarantee,
 - (c) ETE through its own fault commits a material breach of this contract, or if
 - (d) the damage is attributable to gross negligence or wilful conduct on the part of ETE.
- (2) In all other cases ETE has no liability for damages whatsoever, irrespective of the legal basis.
- (3) In any event liability shall be limited to such damages which ETE foresaw or ought to have foreseen at the time of the conclusion of the contract, in the light of the facts and matters of which ETE then knew or reasonably ought to have known as a possible consequence of the breach of contract and to such damages which occur typically in connection with this type of transaction. This limitation of liability is not applicable in cases of subsection (1), lit. a) and b) of this section 10 (liability) as well as in cases of wilful damage.
- (4) The exclusion and/or limitation of claims for damages according to the above sections apply also to claims against employees and contractors of ETE.

11. Force Majeure

Notwithstanding any rights pursuant to art. 10 (liability) ETE is not responsible or liable for any impediments to or default of the performance of any part of this contract insofar as the same is caused by the occurrence of events beyond ETE's control, including strikes or any other industrial disputes. Should such conditions prevail for 30 days or more, ETE and the Buyer shall have the right to rescind the contract at any time by giving notice to the other party without any liability for loss or damage caused thereby.

12. Liability of the Buyer

Where the goods are manufactured according to drawings, labels, trademarks or other specifications of the Buyer Buyer undertakes to indemnify and hold harmless ETE from any and all claims asserted by a third party against ETE for the infringement of intellectual property rights including but without limitation patent rights, trademark rights and copyrights.

13. Retention of Title

- (1) ETE retains title to the delivered goods (hereinafter "the retained goods") until full settlement of all claims – present and future – under the business relationship with the Buyer.
- (2) The retained goods are always processed or transformed by the Buyer on behalf of ETE as producer, but without binding ETE. In case ETE loses title to the delivered goods due to processing or transformation ETE acquires partial title to the new product proportionate to the value of the delivered goods in relation to the value of the other components of the new product at the time of processing. Where the title entirely passes to the Buyer due to fixed attachment or mixture, the Buyer is obliged to transfer to ETE a partial title proportionate to the value of the delivered goods in relation to the value of the other components of the new product at the time of the fixed attachment or mixture. The Buyer will diligently store the goods to which ETE has acquired the (partial) title on behalf of ETE. If the goods are situated with a third party, the Buyer herewith assigns all claims for possession against the third party. ETE herewith accepts such assignment. ETE's partial title acquired under the provisions of this clause shall pass to the Buyer under the same conditions as ETE's full title to the delivered goods.
- (3) The Buyer shall be entitled to resell retained goods in the ordinary course of his business. The Buyer assigns to ETE all present and future accounts receivable (including VAT) resulting from the sale of these goods in the amount corresponding to the invoice value of the respective retained goods. ETE accepts such assignment. The Buyer remains entitled to collect said accounts receivable from the respective party which does not, however, affect ETE's right to collect the account receivable itself. ETE is obliged not to collect the assigned accounts receivable, while the Buyer fulfils his obligation to forward collected payments to ETE, is not in default of payment and no filing for the commencement of insolvency proceedings has been made and the Buyer has not suspended payment.

- (4) The Buyer is not entitled to use the goods title to which is retained for any other purposes. In particular he is not entitled to transfer ownership by way of security or pledging. The accounts receivable assigned to ETE may be assigned for security purposes to or pledged in favour of a third party only with ETE's prior written consent.
- (5) The Buyer must notify ETE in writing without undue delay of any attempts of impairment or attachment of the retained goods by third parties. The cost required to protect the right of ETE has to be borne by the Buyer to the extent that such costs will not actually be reimbursed by the third party.
- (6) If the Buyer commits a material breach of contract, in particular if he is in default of payment, ETE shall be entitled to take the goods title to which is retained back at the Buyer's expense or to demand assignment of the rights of possession which the Buyer has towards third parties. In addition thereto ETE is entitled to revoke the Buyer's right to sell the goods, collect accounts receivable and to use, process, ship or sell the retained goods. Where ETE takes the goods title to which is retained back or sells these goods, such act shall not be deemed to be a rescission of contract. ETE may offset the proceeds of the sale against the outstanding amounts. The Buyer is liable for any loss to the extent that the proceeds of the sale are lower than the purchase price outstanding.
- (7) To the extent that the value of the securities provided exceeds the claims of ETE by more than 50 % ETE is obliged upon the Buyer's request to release securities at its discretion.
- (8) To the extent that ETE is entitled to take back retained goods, the Buyer undertakes to offer ETE and its representatives the irrevocable right to enter its premises during normal business hours and to tolerate the removal of the retained goods.

14. Proof of Export

If the Buyer who is not a resident in the Federal Republic of Germany (external Buyer) or his representative calls for goods and carries or dispatches them abroad (external territory) the Buyer shall provide ETE with the necessary fiscal proof of export. Failing this proof the Buyer shall pay for the deliveries the VAT amount owed by ETE in addition to the agreed purchase price.

15. Governing Law, Disputes

- (1) The contract is governed by the laws of the Federal Republic of Germany. The CISG (United Nations Convention on Contracts for the International Sale of Goods) is not applicable. In case of doubt, commerce clauses shall be interpreted pursuant to Incoterms®, as amended and in effect.
- (2) Essen shall be the place of exclusive jurisdiction in respect of all legal disputes arising from or in connection with a contractual relationship. Notwithstanding such agreed jurisdiction, ETE shall always be entitled to bring legal action at the Buyer's seat of business.