

General Terms of Sale and Delivery of Anlagentechnik Kittel GmbH

I. Area of Application, Written Form

1. Our deliveries and services (hereinafter: "Deliveries"), concerning plants, machines and parts (hereinafter: "plants"), including pertinent consulting and providing of information, shall be performed exclusively on the basis of these General Terms and Conditions of Business.
2. General terms and conditions of business of the contractual partner (hereinafter: "Buyer") shall only be applicable with our express written acknowledgement.
3. All representations made under this contract, any modifications of contract and collateral agreements must be made in writing to become effective (including facsimile). This written form requirement can be waived in writing only.

II. Conclusion of Contract, Deviations in Quantities, Quality, Self-delivery

1. Our offers are subject to confirmation. Only upon such written confirmation a contract with Buyer shall come into effect. We are entitled to accept the Buyer's offer of contract inherent in the purchase order within two weeks upon receipt.
2. Agreements on quality shall result exclusively from our product description and from the possible use expressly acknowledged by us. Pictures, drawings, technical and other information contained in our offer or transmitted later are only of approximate significance unless expressly confirmed as binding.
3. Title of ownership and copyrights concerning all documents are reserved. The documents have to be kept confidential. This applies likewise to documents furnished by buyer if expressly marked as confidential.

III. Delivery, Delivery Date, Partial Quantities, Self-delivery, Delivery Problems

1. Any delivery made to the place indicated in the purchase order does not alter the place of fulfilment being the place of dispatch of the plants unless expressly agreed otherwise. Delivery dates are not binding unless agreed upon with binding effect. Partial deliveries are permitted; they shall be considered a separate contract.
2. In case Buyer will collect the plants a date of readiness shall be agreed which will bind us for fourteen days, unless something else has been expressly agreed upon. After the futile elapse of this period we may, without giving notice, withdraw from the contract and/or claim damages.
3. If Buyer's off take is delayed non-accidentally for one week or more we are entitled to claim five p.c. of the gross purchase price and for each additional week of such delay another five p.c. up to 25 p.c. of the gross purchase price, unless we prove higher damages. A first instalment made on the purchase price may be withheld by us as a security for our claims.
4. The procurement of plants is subject to their correct and timely delivery to us by suppliers, provided the deficiency is beyond our control, this being the case in particular if we have purchased the plants congruously.
5. Unforeseeable obstructions during the disassembly, the preparation and carrying out of the shipping that are beyond our control – taking into consideration our own due diligence – entitle us to postpone, limit or cancel our obligations. This shall be particularly applicable to operational / traffic / dispatch breakdowns, fire, flood, explosion, theft, lack of labour / power / raw and/or auxiliary materials, strike and lock-out, governmental orders ("force majeure"). Buyer shall be informed immediately about any such non-availability. In case of rescission pursuant to the statutory regulations, the consideration shall be returned without undue delay.

IV. Risk of Loss, Transport Insurance

1. Transport risk shall pass to Buyer on the delivery to the forwarding agent, no matter who requested the shipment and for whose account and from which place shipment is made.
2. We shall only be obligated to take out transport insurance and pay the insurance premiums if so agreed expressly.

V. Prices, Payment, Set-off, Assignment, Letter of Credit

1. The prices are net prices in Euro without deduction and are subject to the value added tax as applicable at the time of delivery. If according to the contract the delivery shall be made more than eight weeks after its conclusion we shall be entitled to adapt the prices accordingly.
2. The purchase price is to be paid without deduction at the time of delivery unless another date has been agreed upon. We are entitled to withdraw from an agreed extension of payment in case the financial situation of Buyer deteriorates or the payment is endangered otherwise.
3. In exceeding the date of payment, the Buyer shall be in default; also without a specific reminder default interest of eight p.c. above the official base rate shall be charged, in the minimum twelve p.c. per year, notwithstanding the assertion of further damages.
4. Buyer shall be entitled to set-off counter-claims only if these are recognized by declaratory judgement or are uncontested. Claims against us, except for payment of money, are not assignable to third parties.
5. Before any export delivery Buyer shall have transmitted an irrevocable letter of credit issued and confirmed by a major international bank in our favour. In this case we will not reserve title to the goods (VI).

VI. Reservation of Title, Transfer by Way of Security

1. We retain title to the plants delivered until full payment of all claims relating to the current business relationship has been made.
2. Buyer is entitled subject to revocation to further sell the plants in the ordinary course of business.
3. The assembly of the plants by Buyer shall always be made on our behalf and order for as long as the claims relating to the current business relationship have not been paid in full. If the assembly comprises third party equipment we shall receive co-ownership in the proportion of the value of the plants delivered by us to the other parts connected to them.
4. If according to the above paragraphs or due to any other circumstances we should lose title to the plants, or if they are damaged and a claim accrues to Buyer on the basis of such sale, loss or damage against a third party, Buyer assigns such claim to us already now in the value of the invoice amount. Notwithstanding this assignment, Buyer is entitled to collect the claim itself. We reserve the right to collect the claim ourselves once Buyer defaults in payment. If there are no claims against third parties, Buyer hereby transfers to us the title to the goods in its ownership stored in its warehouse to secure the claims.
5. We undertake to release the above securities in as much as their value exceeds 25 % of our secured claims.

VII. Warranty, Statute of Limitations, Notification of Defects

1. For new plants or parts we provide a warranty at our option by means of rectification of defects or by substitution of delivery, the warranty period being one year starting from the delivery. With regard to wearing parts any warranty is excluded.
2. In case the due rectification of defects or the substitution should prove abortive. Buyer may only demand price reduction or withdrawal from the contract. Damage claims are excluded in any case.
3. Buyer shall notify to us in writing of any recognizable damages immediately after delivery of the plants; other defects immediately after their detection and not later than one year after delivery, otherwise the assertion of the warranty claim will be excluded. The burden of proof for the defect, for the time of its detection, for the timeliness of the notification and for any other prerequisites of the claim lies solely with Buyer.
4. If used plants or parts are the contractual objects, we deliver these under exclusion of any warranties in the state as inspected by Buyer, in particular any warranty for measures and other qualities and for proper functioning being excluded, unless we have expressly assumed liability (wherefore mere verbal or optical descriptions are not sufficient).

VIII. Limitations of Liability

1. We shall not be liable for inappropriate use of our plants. In case of slight negligence we shall only be liable for the breach of material contractual obligations and only for foreseeable average damages typical to the nature of the plants, irrespective of the grounds of liability. For indirect or consequential damages such as loss of production we shall be liable only if a wilful act on our part can be proven.
2. All the limitations of liability shall also inure to the benefit of our vicarious agents.
3. The above limitations of liability shall not affect Buyer's claims due to injuries of the body and health attributable to us, or in case of loss of life.

IX. Severability, Choice of Law, Venue

1. In the event that any provision herein contravenes the applicable law or is unfeasible, such provision does not affect the validity of the contract as a whole and shall be substituted by a valid and feasible clause with economic import coming as close to the one intended by the clause substituted.
2. German law shall be applicable. The venue for any proceeding relating to the provisions of this contract shall be the Munich Regional Court I, panel for commercial matters.