

General Terms and Conditions of Sale and Delivery
of
Agrichema Schüttguttechnik GmbH & Co. KG

I. General

1. The present terms and conditions of sale and delivery shall apply to all deliveries, services and offers by Agrichema Schüttguttechnik GmbH & Co. KG - hereinafter called „Supplier“ -; to be precise, they shall also apply to all future business transactions even if not expressly agreed again. Any counter confirmations by the customer with reference to its general terms and conditions or its conditions of purchase are hereby rejected.
2. The Supplier's offers are subject to change without notice and not binding. This shall also apply to all indications of measure and weight as well as to equipment and performance data in the Supplier's catalogues, leaflets and price lists. The first offer shall be submitted free of charge by the Supplier, who reserves the right to invoice further offers or modifications of the first offer or the design work adequately, at least in accordance with the engineers' fee scale (GOI – Gebührenordnung für Ingenieure), if the contract does not materialise.
3. The Supplier reserves the right to design modifications in the form of technical improvements.
4. The customer engages not to disclose the plans and technical documents submitted to it by the Supplier to any third parties. All plans and technical documents have to be returned to the Supplier immediately upon the conclusion of a contract with a third party, otherwise at the latest after six months.

II. Prices

1. All prices are net prices (duty unpaid) to which the legal turnover tax applying at the time of delivery has to be added as and when necessary. Any additional deliveries and services - e. g. packing, shipping, transport - shall be invoiced separately.
2. If delivery as per agreement takes place more than three months after conclusion of contract, or if the delivery date is delayed by more than six weeks for reasons the Supplier is not responsible for, the Supplier may invoice the list price applying at the time of delivery.

III. Acceptance, Delivery, Time of Delivery, Passage of Risk

1. The customer shall be obligated to take delivery of the goods. As a major duty of performance within the scope of the interrelation, the obligation to take delivery shall be performed immediately.
2. Passage of risk is at the latest upon shipment of the goods; 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 the delivery.
3. In case shipment is delayed due to circumstances the customer is responsible for, passage of risk to the customer shall be as from the date the goods are ready for shipment; in this case the Supplier will, upon request and at the expense of the customer, obtain the insurance the customer demands. Moreover, the customer will pay the costs incurred from storage, however, in the case of storage at the Supplier's plant at least 0.5 % of the invoice value per month. After unsuccessful expiration of a reasonable time limit fixed by the Supplier, the latter shall be entitled to dispose of the delivery item otherwise and supply the customer within a reasonably extended time limit.
4. The Supplier shall be entitled to part deliveries and part performance in so far as this is acceptable for the customer.

5. Any delivery and performance dates specified by the Supplier shall be subject to proper, i.e. correct and on-time delivery to the Supplier; they shall be deemed met when readiness for shipment at the Supplier's plant or warehouse is announced.

6. The Supplier shall not be responsible for any delays in delivery and performance due to force majeure and to circumstances considerably impeding the Supplier's performance or making it impossible for it to perform – including strike, lock-out, boycott and governmental measures, even if such events occur with suppliers of the Supplier or such suppliers' subcontractors – even in the event that time limits and dates have been agreed in writing. The occurrence of any such event shall entitle the Supplier to postpone delivery or performance by the duration of the impediment plus a reasonable start-up period, or to cancel the contract in whole or in part with regard to the non-performed part. In the case of an impediment lasting for more than one month, the customer shall, after expiration of a reasonable period of grace, be entitled to cancel the contract with regard to the non-performed part. In case the period of delivery is extended or the Supplier is discharged of its obligation, the customer may not deduce any claims for damages from this. The Supplier may only rely on the aforesaid circumstances provided that it informs the customer of such circumstances without delay.

IV. Installation, Assembly

1. The customer shall provide at its own expense and upon request the following:
 - a) auxiliary staff such as labourers and, if necessary, also bricklayers, carpenters, metalworkers/fitters, crane-operators, and other skilled workers, including the tools required for the assembly work;

 - b) any items and materials required for assembly and commissioning, such as timber, blocks/wedges, backings/supports, cement, plaster, sealing material and lubricants, fuel, etc. as well as scaffolds, cranes and elevators, and other devices;

- c) operating power, gas, fuels, oxygen and water, including the necessary supply to the point of use, heating and general lighting;
 - d) appropriate, dry and lockable rooms of adequate size near the assembly site for the storage of machine parts, apparatus, materials, tools, etc., as well as appropriate work and recreation-rooms including sanitary installations for the assembly staff as one would reasonably expect under the circumstances,
 - e) protective clothes and safety appliances as may be necessary due to the special conditions existing at the assembly site, and which are unusual for the Supplier's branch of industry,
 - f) shall do all earth, concrete, caulking, scaffold, plaster, painting work as well as any other auxiliary work, including the building materials required,
 - g) shall take all necessary measures required to protect the property of the Supplier and its assembly staff at the building site.
2. Prior to the start of the assembly work, the customer has to provide the necessary information about the location of any concealed current conduction, gas and water conduits or similar installations as well as the necessary statics data unrequested.
3. The delivery items required for starting work must be present on site prior to the start of installation or assembly, and all earth, bricklaying, carpenter's and other preparatory work must have progressed so far that installation and assembly can be started immediately after the arrival of the Supplier's assembly staff and carried out without any interruption; the entrance ways and the installation and assembly site in particular must have been levelled at floor level and cleared.

4. In case installation, assembly or commissioning are delayed due to circumstances the Supplier is not responsible for, the customer has to bear the cost for the assembly staff's waiting time and any other expenses incurred by the Supplier during such waiting period.

V. Customer's Rights Arising from Defects

1. Only the Supplier's product specification shall generally be deemed agreed as the goods' quality. Any additional public statements, sales talk or advertising by the Supplier are not to be deemed a quality description of the goods in conformity with the contract. The Supplier does not grant any guarantees for legal purposes.
2. The customer shall immediately inform the Supplier in writing of any defects, however, at the latest within eight days of receipt of the goods and before the intended incorporation. Any defects the customer is, even under careful inspection, not able to discover within such time limit of eight days have to be communicated to the Supplier immediately after discovery in writing.
3. The customer agrees to give the Supplier forthwith the opportunity to convince itself by inspection of the defects of the non-conforming goods.
4. In the case of any justified complaints, the Supplier shall replace the defective goods or deliver any missing quantities subsequently (subsequent performance). In case subsequent performance should fail after a reasonable time, the customer may at its option either request a reduction in the purchase price or withdraw from the contract; this shall also apply if the Supplier refuses subsequent performance or in case such subsequent performance should be unacceptable for the customer. The right to withdraw from the contract shall be excluded in the case of any only minor violation of contract.

5. Any rights of the customer arising from defects shall become statute-barred after the expiration of one year from the date of delivery, unless the Supplier has maliciously concealed a defect. This shall also apply to any defects within the meaning of Clause 2, Sub clause 2.
6. Only the actual customer shall be entitled to the customer's rights vis-à-vis the Supplier arising from defects, which rights are non-assignable.
7. The above clauses shall finally regulate the customers' rights arising from defects.

VI. Payment

1. The Supplier's invoices have to be paid without deduction within 30 days after the date of invoice.
2. Payment shall not be deemed effected until the amount is free from any pleas and unconditionally available to the Supplier. If payment is effected by cheque, payment is not to be deemed effected until the drawee bank has paid the cheque.
3. Payment by bills of exchange is permissible only after prior agreement and is exclusively considered a conditional payment. Bills of exchange have to be provided with the bill guaranty of a bank accepted by the Supplier and must not exceed a term of ninety days. Discount and bill charges have to be paid in cash by the customer immediately upon maturity of the bill-based claim.
4. The customer shall be in default if it does not pay the Supplier's claims within 30 days of receipt of invoice.
5. In the event of the customer's default, the Supplier shall be entitled to declare the full remaining balance to be due and payable and demand immediate payment in cash.

In case the Supplier learns after conclusion of contract that the customer's financial situation has essentially deteriorated, it shall also be entitled to demand immediate payment in cash against return of bills of exchange and cheques. In such cases, the Supplier shall, where appropriate, also be authorised to demand advance payment and the provision of collateral.

6. The customer shall only be entitled to setoff provided that its counterclaims are undisputed or have been recognised finally.

VII. Reservation of Ownership, Assignment

1. The Supplier is granted the following securities by the customer until all the claims – including any outstanding balance from current account – the Supplier is now and in future entitled to vis-à-vis the customer on whatever legal basis have been satisfied:

The goods shall remain the property of the Supplier (conditional commodity). Any treatment or processing of the conditional commodity is by order of the Supplier; processing is free-of-charge and without any obligation for the Supplier; the Supplier shall be deemed manufacturer in accordance with Sect. 950 German Civil Code and, therefore, remains the owner of the products at any time and at any level of processing. In case the customer combines such goods with other goods not belonging to the Supplier during processing, the Supplier shall be entitled to joint ownership of the newly created object at the ratio of the conditional commodity's invoice value to the other processed goods at the time of processing. The provisions regarding the conditional commodity shall, apart from the aforesaid, also apply to the new object emerging from processing. Such object shall be deemed a conditional commodity within the meaning of these General Terms and Conditions.

The customer shall be entitled to sell the conditional commodity in the due course of business unless it is in default. The customer shall even now fully assign any claims arising from resale or any other legal ground, e.g. insurance, tortuous act, with regard to the conditional commodity, including all claims from current account, to the Supplier for securing purposes; the Supplier shall accept such assignment. The Supplier shall revocably authorise the customer to collect the claims assigned to the Supplier for account of the Supplier in its own name. The customer is not entitled to dispose of the claim in another way, e.g. by assignment. The authorisation to collect may only be revoked if the customer does not meet its obligations properly. At the Supplier's request, the customer has to inform its buyers of the assignment. The customer shall further be obligated to inform the Supplier on first demand of the names of the buyers and the amount of the assigned claims and furnish any information required to assert the assigned claims.

2. In case the customer should not properly or not at all fulfil its contractual obligations, the Supplier may, after a previous warning and the unsuccessful expiration of a time limit of fourteen days, withdraw the authorisation to collect, disclose the assignment of the claims to the third-party debtors and request the surrender of possession of the conditional commodity and, where appropriate, the assignment of the customer's right to recover possession against any third parties.
3. In the event of third-party access to the conditional commodity, for example by attachment, the customer has to draw attention to the Supplier's ownership and inform the latter immediately.
4. Apart from the Supplier's ownership of the conditional commodity, any assigned claims will automatically be transferred to the customer upon complete payment of all the Supplier's claims from the business relationship.

VIII. Limitation of Liability

1. Except for any damages caused by injury to life, body and health, the Supplier shall only be liable with regard to damages caused by itself and/or its vicarious agents in the case of an intentional or gross negligent breach of duty, unless a contractual duty which is essential due to the nature and subject of the contract is violated.
2. In the case of any slightly negligent breach of duty, the Supplier's liability shall be restricted to the typical foreseeable average damage.

IX. Place of Performance, Applicable Law, Place of Jurisdiction

1. The place of performance with regard to all claims arising from the contractual relationship is D-55444 Waldlaubersheim.
2. The laws of the Federal Republic of Germany and the INCOTERMS in their respective latest version shall apply to the present general terms and conditions of sale and delivery as well as to any other legal relationship between the customer and the Supplier.
3. The place of jurisdiction for all legal disputes arising directly or indirectly from the contractual relationship, its materialisation or its interpretation, shall be Bad Kreuznach, provided that the customer is a businessman within the meaning of the German Commercial Code, a legal public law entity or public special assets, or has its domicile abroad. The parties to the agreement shall also be entitled to file a suit at the defendant's place of general jurisdiction.

X. Partial Invalidity

In case any of the provisions of these general terms and conditions or any provision within the context of other agreements should be or become ineffective, this shall not affect the validity of the other provisions or agreements.