

Terms and Conditions of Sale and Delivery of Gather Industrie GmbH

Edition 01/2009

I. Scope of Terms

1. All offers, supplies and services - including those agreed upon orally, via telephone, wire or fax - shall exclusively be effected on the basis of our terms and conditions of sale and delivery as stipulated hereinafter.
2. Unless the ordering party raises an objection immediately after having received the present notification, these conditions shall be regarded as agreed irrespective of whether a contract aiming at effecting supplies and services is concluded in each individual case.
3. Any deviating general or purchasing terms and conditions of the ordering party are contradicted even now. Such an objection need not be repeated in each individual case.
4. Any supplementary or deviating agreements or subsequent contract modifications - including changes of the terms of payment - shall be subject to our written approval and acknowledgement.

II. Offers and Conclusion of Contracts

1. Offers are always without obligation, subject to confirmation and based on the ordering party's operational requirements, communicated to us, governing the use of the inquired goods and services to be furnished.
2. Order shall not be deemed as accepted by us unless confirmed in writing or executed by us.
3. Field service employees and commercial agents have no authority to transact business on our behalf.

III. Prices

Prices shall be charged as applicable on the date of delivery. Prices shall be understood net, ex warehouse or ex works, as elected by us. Cost of shipping and packing are charged as applicable. For orders the value of which is less than € 100 a markup of € 25.00 for small-volume purchases shall be charged. In case of invoice amounts of less than € 250.00 we shall be entitled to supply on cash-on-delivery basis.

IV. Shipment and Passage of Risk

Shipment shall exclusively be effected at the ordering party's risk and cost. The risk shall pass to the buyer when the consignment is handed over to the forwarder, carrier, transportation provider. Unless the type of shipment has been prescribed delivery shall be made at our discretion or judgment without assertion that the most cost-effective shipment will be selected.

V. Time and Period of Delivery

1. Time and period of delivery shall be without obligation to us and, moreover, shall be subject to the prior clarification of all technical details.
2. If we are in default of delivery for reasons within our scope of responsibility the ordering party having first granted in writing a reasonable extension period of at least 2 weeks and given warning of rejection shall be entitled to withdraw from the contract after the extension period has expired.
3. Moreover, the ordering party shall only be eligible to damages if the delay in delivery has been caused deliberately or is due to gross negligence on our part.
4. Meeting our delivery obligations shall be subject to the timely and proper fulfillment of the ordering party's obligations.
5. If the ordering party is in default of accepting the delivery of the goods or violates other obligations to cooperate, we shall be entitled to demand a compensation for the damage we suffered including any additional expenses. In such a case, also the risk of accidental loss or accidental deterioration of the subject matter of the contract shall pass to the ordering party at the time its default of acceptance occurs.
6. We shall be entitled to rescind our delivery obligation in the event of force majeure, war, machine breakage, material and power shortages.
7. Part shipments are permissible. Any part shipment shall be regarded as a self-contained consignment.

VI. Warranty

1. We must be notified of complaints in writing immediately, in any case not later than 8 days after delivery of the goods (preclusion period). Deficiencies that cannot be detected within this period have to be reported to us immediately in writing after they can be recognized but, in any case, not later than 8 days thereafter.
2. Notwithstanding the legal provisions governing the statute-barring of warranty claims such claims shall be excluded unless raised by taking legal action within 1 month of the date of our written rejection.
3. In the event used goods are delivered, any warranty shall be excluded to the extent permitted by law.
4. In the event brand-new goods are delivered, our warranty obligations shall be limited as stipulated below:
 - a) In case the delivered goods show a deficiency for which we can be held responsible we shall be entitled at our discretion to remedy the deficiency, supply replacements or effect additional supplies. In case we take remedial action, we shall absorb all the expenses required for the remedy of the deficiency, in particular the cost of transport, travel, labor and material, provided such cost does not increase as a result of the respective goods having been delivered to a place other than the place of fulfillment.
 - b) Should we be unwilling or unable to remedy the deficiency or if such remedial action is delayed beyond a period considered reasonable and if we are responsible for such a delay, the ordering party shall be entitled to rescind the contract (cancellation) or demand a reduction of the contract price.
 - c) Any warranty shall be deemed forfeited if third parties carry out modifications to or repairs on the goods delivered without our written consent.
 - d) A warranty with respect to our products can only be given if we have been duly informed of any and all operating conditions at the time the contract is concluded. No warranty liability can be assumed, in particular, for damage attributable to operating conditions of which we have not been notified and which were not the subject matter of our offer or order acknowledgement.
 - e) Any further claims of the ordering party for whatever legal reason shall be excluded. Therefore, we shall not be answerable for damage other than to the delivered goods themselves; in particular, we shall not be held liable for loss of prospective profits or other economic losses the ordering party may incur.
 - f) Such an exemption from liability shall not apply in the event the damage has been caused deliberately or is due to gross negligence on our part or by any third party commissioned on behalf of or by us. If the commissioning of a third party has been agreed with the ordering party we shall only be liable for the correct selection of such a third party. Any warranty claims we may have against such a third party shall be assigned to the ordering party on request.
 - g) In the event that we have violated an obligation material to the contract, our obligation to pay damages shall be limited to the sum covered by our liability insurance. We are prepared to disclose the respective insurance policy to the ordering party, if so desired.
 - h) Our warranty obligation shall be 24 months after the passage of the risk for new supplies and 6 months for repairs and rehabilitation.

VII. Joint and Several Liability

1. Any further liability for damages in excess of what has been stipulated in Clause V, sub-clause 3 is excluded irrespective of the legal nature of the claim raised.
2. This does not apply to claims arising in connection with Clauses 1, 4 of the Product Liability Act as a result of initial impossibility or initial inability.
3. In the event our liability has been excluded or limited this shall also apply to the personal liability of our employees, staff, workers, representatives and agents.

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4. The statute-barring of claims arising in connection with product liability shall be governed by Clause VI, sub-clause 4 h, irrespective of the party such claims are asserted against.

VIII. Reservation of Ownership

Goods and services supplied by us shall remain our property until our invoices have been paid in full (reservation of ownership) with amendments as set forth hereinbelow being applicable:

1. The ordering party will process the delivered goods on our behalf; to the exclusion of Clause 950 German Civil Code (BGB) we shall become owner of the manufactured goods without any obligation on our part. In case the above mentioned processing also involves goods not supplied by us that have been delivered in the framework of a similar reservation clause, we shall become co-owner in the goods manufactured to an extent that reflects the sales value of the goods supplied by us in proportion to the sales value of the goods so manufactured.

The retention of ownership shall also apply to components of the goods supplied that are separated from the goods.

2. Unless the ordering party is in default it shall be entitled to resell the delivered goods in the normal course of business and in the framework of its general terms and conditions with the following prerequisites to be met:

The claims, even to the extent they are conditional or future, arising from such a resale of the delivered goods shall herewith be assigned to us in advance, irrespective of whether these are contractually or legally enforceable claims.

If the delivered goods are resold, whether in processed or unprocessed condition, together with other goods not supplied by us the assignment of claims arising from such a resale shall be limited in applicable proportion to the value (at the time of delivery) of the goods delivered by us, but at least at the purchase price invoiced.

The authorization to resell such goods in the normal course of business shall only be given on condition that we become the owner of the claims arising from such a resale. It shall not be given in the event the ordering party concludes an agreement with a third party that prevents or impedes the assignment of the claims it has acquired as a result of such a resale.

Any other disposal by the ordering party of the goods delivered under the reservation of ownership clause prior to the passing of title shall be prohibited.

3. If the ordering party does not meet its payment obligations towards us in time we shall be entitled to retrieve the goods subject to reservation and collect any claims assigned to us in accordance with sub-clause 2).

If the ordering party itself collects claims assigned to us it shall be obliged to keep relevant amounts separate or post each individual amount to a separate account.

4. In case the delivered goods are integrated by us or by the ordering party into the construction of a building it shall herewith be agreed that this is only provisional unless all our claims against the ordering party are fully met. It shall be understood that we will retrieve such goods unless our claims are completely satisfied within the agreed time limit.

If the building is not the ordering party's property, ordering party agrees that it shall conclude an agreement to this effect with the owner.

5. The reservation of ownership with all its amendments shall remain in effect until all our claims against the ordering party arisen whenever and for whatever legal reason have been fully met, even if payments are made for specifically earmarked claims. In the event of an account current the reservation of ownership shall also apply to the relevant balance.

In case claims have been assigned to us, an express re-assignment declaration must be made out by us to enable the ordering party to re-acquire such claim.

6. All claims the ordering party acquires against third parties during the term of our ownership reservation as a result of damage, destruction or loss of the goods delivered shall herewith be assigned to us, which in particular shall apply to claims arising out of insurance contracts.

7. In the event of an attachment or other encumbrances levied by a third party with respect to the goods subject to reservation we shall be notified without delay. The ordering party shall pay any costs and expenses of interventions.

This provision shall take effect analogously if third parties make a reservation of ownership of the delivered goods.

8. If the value of collaterals available to us exceeds our claims by more than 20 % in total, we shall be obliged to release relevant collaterals at our discretion if so requested by the ordering party.

IX. Payment

1. Invoices shall be paid net, exempt from charges, within 30 days in the currency indicated on the invoice, unless otherwise agreed upon. Payments received earlier shall not entitle the ordering party to deduct discount from our invoices.

2. Payments received are netted at our own discretion in the event several claims exist against the ordering party. Should we, as an exception, accept bills or checks, to which we are not obliged, such acceptance is on account of payment. We shall not be held liable for a timely presentation. Discount and charges/expenses shall be paid by the ordering party. The date of redemption shall be regarded as time of payment.

3. Field service employees and commercial agents have no authority to collect.

4. The ordering party shall be in default in payment after a period of 30 days after invoice date has expired without dunning being required. In such a case we shall be entitled, notwithstanding the raising of further claims, to charge as of the due date interest in the amount of 8 percent above the relevant base lending rate charged by the European Central Bank in the event of merchants or in the amount of 5 percent above the relevant base lending rate charged by the European Central Bank in the event of consumers. The responsibility to provide evidence that the damage we have incurred is lower shall solely lie with the ordering party.

X. Assignment

The assignment of contractual rights by the ordering party without our express consent shall be excluded.

XI. Setting Off and Retention

The ordering party shall only be entitled to offset claims if its counterclaims have been determined so as to be legally effective, are uncontested or recognized by us. The ordering party shall have no retaining lien on goods in the event of contested counterclaims.

XII. Place of Performance, Legal Venue, Final Provisions

1. The setting off and retention with respect to the claim for payment of the supplied goods shall be excluded.

2. Place of fulfillment is the domicile of our company.

3. Any disputes arising out of or in connection with the business relation including suits upon bills and checks shall be referred, for both parties, to the court having jurisdiction in Duesseldorf.

4. To the express exclusion of the UN Convention on Contracts for the International Sale of Goods German law shall exclusively apply.

5. Should one or more provisions of the foregoing terms and conditions or in a concrete agreement concluded between the parties be or become ineffective, the effectiveness of the remaining provisions or of the contract as a whole shall neither be impaired nor affected. In lieu of such an ineffective provision an agreement shall be reached and included that, to the extent permitted by law, meets the legal and economic objectives of the contractual parties in the best possible way.