

## **General conditions of sale, delivery and performance**

### **I. General**

The following conditions shall apply exclusively to our deliveries and performance. Different conditions, including those of the buyer, shall only then be binding for us if we have acknowledged them expressly in writing. These general conditions shall also apply to all transactions concluded with us in the future.

Terms and conditions of purchase of the buyer are contradicted herewith. We shall also not be bound by conditions of this kind even if we do not expressly contradict validity upon conclusion of contract.

### **II. Conclusion of contract, scope of delivery and performance**

1. Our written confirmation of order or the written contract shall be authoritative for the scope of delivery and performance. In as far as our time-bound quotation shall be accepted in due time and we have not yet confirmed the order, our quotation shall be authoritative for the scope of delivery. Additional agreements and amendments must be confirmed by us in writing.

2. The documents belonging to the quotation such as illustrations, drawings, details of quantities, dimensions, weights, loads, processes, consumption and performance as well as regarding installation deadlines and the number of installation and supervisory staff shall be approximately authoritative, as long as they have not been expressly identified as binding.

3. We reserve the ownership rights and copyrights to the cost estimates, drawings and other documents; they can only be made accessible to third parties following our prior approval. Drawings and other documents belonging to quotations shall be returned to us immediately if the order is not placed with us.

4. The buyer shall be solely responsible for any necessary official approvals. All costs in this connection shall be for his account. In the event that the deliveries and performance are increased due to official decisions, requirements etc., in particular those passed after conclusion of contract, we shall have the right to demand a reasonable additional charge.

### **III. Prices and payments**

1. For lack of a special agreement, our prices shall be valid ex works, net plus the legal VAT. They shall include loading, but not packaging and unloading.

2. For lack of a special agreement, payment shall be made in cash without any form of deduction, free our point of payment, 14 days after billing, namely one third advance payment after receipt of the confirmation of order, one third upon expiry of half of the agreed delivery time, one third 4 weeks after delivery or note of readiness for shipment; all instalments without deduction by means of direct transfer to one of our accounts.

3. If fixed prices are not expressly agreed in the contract, we shall in the case of changes in the cost factors, reserve the right to price adjustment as well as to adaptation of agreed interest rates to the changing money market circumstances up until delivery, if the deliveries and performance take place during a period of time of more than 4 months after conclusion of contract.

4. The retention of due payments or set-off against any counterclaims of the buyer that we have disputed or that have not been recognised by declaratory judgement shall not be admissible.

### **IV. Delivery deadline**

1. The delivery deadline shall begin with the despatch of the confirmation of order, not however before the provision and clarification of the parts and documents, approvals and release to be obtained or delivered by the buyer as well as not before receipt of an agreed advance payment. In the event that these obligations shall not be fulfilled by the buyer in good time or if he asks for an amendment to the scope of delivery, the delivery deadline shall be extended accordingly.

2. The delivery deadline shall be adhered to if the delivery item has left the factory by its expiry or readiness for shipment has been notified. As for the rest, the adherence to the delivery deadline shall presuppose the fulfilment of the contractual obligations by the buyer.

3. The delivery deadline shall extend appropriately in the event of force majeure and other unpredictable, extraordinary circumstances for which we are not responsible, e.g. following material procurement difficulties, operational disturbances, strike, lockout, official intervention, power supply difficulties. This shall also apply if these circumstances arise with sub-suppliers or occur during

In the event that our delivery and performance shall be impossible or unacceptable in whole or in part due to the mentioned circumstances, we shall be released from the delivery obligation. If the delivery time is extended, claims for compensation by the buyer shall be excluded.

4. In the event that the buyer suffers damage on account of a delay that developed in consequence of our fault, he shall, under the exclusion of further claims, be entitled to demand compensation for delay. This amounts to 0.5% for every full week of the delay, in all, however, maximum 5% of the value of that part of the entire delivery that cannot be used in good time or not according to the contract as a result of the delay.

5. In the event that despatch shall be delayed for more than one week after notification of readiness for shipment for reasons for which we are not responsible, we can, at our discretion, store the delivery items at the expense and for the risk of the buyer. Upon storage in our own factory we can charge at least 0.5% of the contract price of the stored parts for delivery per month.

6. Our quotations for rental plants as well as for overhauled second-hand equipments are subject to change without notice provided that the plants/equipments are available on our stock.

### **V. Passing of risk and acceptance**

1. The risk shall pass to the buyer upon despatch of the delivery items at the latest, namely also if partial deliveries are carried out or we have taken on other services, e.g. despatch, delivery or installation.

2. The type of despatch shall be carried out at our choice under exclusion of all liability. We shall, if desired and at the buyer's expense, take out an insurance – insofar as this is possible - for the transport he requested.

3. If despatch is delayed as a result of circumstances for which the buyer is responsible, the risk shall pass to the buyer as from the day of notification of readiness for shipment. We shall, however, be obligated to effectuate the insurance that the buyer asks for upon his request and at his expense.

4. In case acceptance of the delivery items shall be agreed, this shall be carried out at the manufacturer's premises immediately after notification of readiness for acceptance. The costs of the execution of acceptance shall be for the buyer's account.

5. In the event that acceptance shall not be requested, the performance shall be regarded as accepted upon expiry of 12 working days after written notification of its completion or delivery, as far as this is carried out by us. If the buyer has used the performance or a part of the performance, acceptance shall be regarded as having taken place after expiry of 6 working days after the beginning of the use if nothing else has been agreed.

### **VI. Reservation of title**

1. We reserve title to the delivery item until settlement of all claims arising from the business relationship with the buyer at the time of delivery.

2. In the event that the delivery item shall be combined or mixed with other items that do not belong to us, or if the delivery item shall be processed by the buyer on its own or together with other items that do not belong to us, our property shall not be lost because of this. We shall, in fact, acquire co-ownership of the new item, namely at a ratio of the value that our reservation property has to the items that have been mixed or combined with it or to the value of the processing. This co-ownership shall supersede our reservation property.

3. The buyer shall be entitled to sell the delivery item in the regular course of business, however only under the following conditions:

Every sale shall take place under reservation of title. The claim of the reseller arising from this reservation of title as well as all other demands arising from the selling-on of the delivery item shall be assigned to us in advance, whereby it shall not make any difference whether the delivery item shall be sold to one or more buyers without or following combining, mixing, or processing. The assigned claims shall serve as security for us in the amount of the retained goods sold in each case.

The reseller shall be entitled to collect the claim arising from resale in spite of the assignment to us. Our power of collection shall remain unaffected by the collection authority of the reseller. We shall not collect the claim assigned to us ourselves as long as the reseller shall duly honour his payment obligation

an already existing delay.

Upon request, we shall be notified of the debtors of the assigned claims and the debtors informed of the assignment.

4. The buyer shall neither pledge the delivery item nor assign it as security. He shall inform us immediately of garnishments, confiscation and other acts of disposal by third parties.

5. In the event of behaviour contrary to the contract on the part of the buyer, in particular in the event of default in payment, we shall, after a demand note, be entitled to demand return and the buyer shall be obligated to hand over. The assertion of the reservation of title as well as the garnishment of the delivery item on our part shall not, however, be regarded as withdrawal from the contract.

#### **VII. Liability for faults in delivery and performance**

Under the exclusion of further claims, we shall be liable as follows for faults in delivery and performance, which also includes the absence of expressly assured features:

1. According to our choice, all those parts that become unserviceable or are significantly impaired in their serviceability within 6 months after acceptance, demonstrably as a result of a circumstance before the passing of risk and in particular on account of faulty construction, poor building materials or imperfect design, shall be repaired free of charge within a reasonable deadline or a new delivery made ex works. The determination of faults of this kind shall be reported to us immediately in writing.

Filter elements are subject to indispensable wear and tear. Therefore we assume warranty for 24 months from date of delivery provided that the costs of the spare part supply concerning the filter elements accepted by CFT as replacement will be charged to 1/24 each per month or part thereof after delivery date at the expense of the ordering customer.

2. The right of the buyer to assert claims arising from faults shall become statute-barred in all cases in 6 months from the point in time of the punctual complaint, at the earliest however upon expiry of the warranty period.

3. Warranty shall not be accepted for damages arising for the following reasons:

Unsuitable or improper use, faulty installation or commissioning by the buyer or third parties, natural wear, faulty or neglectful treatment, care and maintenance, unsuitable operating resources, replacement basic materials, imperfect building work by the buyer, unsuitable foundation soil, chemical, electrochemical or electrical influences, in as far as they do not result from a fault on our part. right to withdraw from the contract in whole or in part. Compensation claims by the buyer on account of withdrawal of this kind shall not exist. Insofar as we shall make use of the right of withdrawal, we must notify the buyer of this immediately.

4. Following notification, the buyer shall give us the necessary time and opportunity in order to carry out all repairs and replacement deliveries that seem necessary at our equitable discretion. We shall otherwise be released from the liability for defects. The buyer shall only have the right to rectify the fault himself or have this rectified by a third party, whereby we shall be notified immediately, and to demand compensation for the necessary costs from us in urgent cases of endangering operational safety and to avert disproportionately high damages, or if we are in default of rectifying the fault.

5. Of the direct costs incurred due to the repair or replacement delivery – and in as far as the complaint proves to be justified - we shall bear the costs of the replacement item including despatch as well as reasonable costs for disassembly and assembly. Furthermore, in the event this can be demanded fairly as the individual case may be, we shall bear the costs of the possibly necessary provision of our supervisory personnel and our fitters and support staff. As for the rest the buyer shall bear the costs.

6. The warranty period for the replacement part and the repair shall amount to 3 months. It shall, however, be valid at least until the expiry of the original warranty period for the delivery item. The deadline for the liability for defects to the delivery item shall be extended by the duration of the service interruption caused by the repair work.

As at: September 2009

towards us.

7. Liability shall be excluded for the consequences arising from any alteration or repair work carried out improperly and without our prior approval on the part of the buyer or a third party.

8. Further claims by the buyer, in particular a claim to compensation for damages that did not occur on the delivery item itself, (consequential damages), shall be excluded. This exclusion of liability shall not apply in the case of intentional and gross negligence and in case of the absence of expressly assured features, if the assurance was precisely aimed at protecting the buyer against damages that did not occur on the delivery item itself.

9. We shall only be liable for damages up to the amount of cover stated in the liability insurance that has been taken out. We shall only be liable for a maximum amount of 5% of the agreed remuneration for damages that are not covered by the insurance.

#### **VIII. Withdrawal and diminution**

1. The buyer can withdraw from the contract if the entire performance becomes irrevocably impossible before passing of risk.

The same shall apply in the case of incapacity on our part. The buyer can also withdraw from the contract if upon ordering similar items, the performance of a part of the delivery becomes impossible as to the quantity and he is able to prove justified interest in rejection of a partial delivery; if this is not the case, the buyer can decrease the consideration appropriately.

2. In the event that the impossibility occurs during the default of acceptance or due to the fault of the buyer, he shall remain obligated to provide the consideration.

3. As far as we allow a reasonable additional respite that we have been set (6 months in the case of performance deficiency) for the rectification of a fault for which we are responsible to expire fruitlessly or if it is impossible for us to rectify the fault, the buyer can demand repudiation of contract or diminution under exclusion of further claims. The repudiation of contract can only be demanded if following objective appraisal of all circumstances, the interest of the buyer in the delivery ceases to exist due to the fault or is impaired so significantly that he cannot be expected to accept the delivery.

4. In the case of unforeseen events as defined by IV. no. 3 of these conditions of delivery, the contract shall be adapted appropriately. As far as this shall not be economically justifiable, we shall have the right to withdraw from the contract in whole or in part. Compensation claims by the buyer on account of withdrawal of this kind shall not exist. Insofar as we shall make use of the right of withdrawal, we must notify the buyer of this immediately.

#### **IX. Miscellaneous**

1. The buyer shall only be able to transfer rights and obligations arising from this contract to third parties with our approval.

2. Taxes and duties that arise in connection with the fulfilment of the contract shall be for the account of the buyer.

3. The court competent for our head office shall be agreed as the jurisdictional venue for all disputes arising from the contractual relationship. We shall, however, also be entitled to bring action at the court competent for the manufacturing premises or for the head office of the buyer.

4. The contract shall also remain binding in its remaining parts in the case of invalidity of individual provisions.