

## **I. Offer**

The documents belonging to the offer, such as illustrations, drawings, weight and dimensional data, are only approximate unless explicitly designated as binding. The supplier reserves the right of ownership and copyright to cost estimates, drawings and other documents (in particular also to information in digital form marked as confidential); they are not allowed to be made accessible to third parties. The supplier is obliged to make plans indicated as confidential by the customer only accessible to third parties with the customer's consent.

## **II. Scope of delivery**

The supplier's written order confirmation is decisive for the scope of delivery. In the event of an offer by the supplier with a binding time commitment and acceptance of the offer in due time, the offer shall be decisive, unless a timely order confirmation is available. Additional agreements and amendments require the written confirmation of the supplier.

## **III. Price and payment**

1. The prices stated in our order confirmations plus the statutory VAT are decisive. In the event of an increase in raw material prices or wages by more than 10% between conclusion of the contract and delivery, we are entitled to raise the sales price accordingly. Customs duties, examination fees, currency compensation amounts and other fees based on public law regulations must be paid by the purchaser.
2. We charge packaging separately and at cost price.
3. Invoices must be paid within 8 days of the invoice date with 2% discount or within 14 days net. The buyer may only make use of the discount if all other claims from the delivery of goods have been settled at the time of payment. Specially agreed terms of payment can be found in the order confirmation.
4. Payment by bills of exchange and cheques is subject to fulfilment. We are entitled to refuse to accept bills of exchange. If the buyer does not meet his payment obligations, in particular if he does not honour cheques and bills of exchange or suspends payments or if we become aware of other circumstances which are likely to reduce the buyer's creditworthiness, we shall be entitled to make the entire remaining debt due for payment, even if we have accepted cheques and bills of exchange. In addition, we are then entitled to demand advance payments.
5. In the event of overdue payment, we shall charge interest at a rate of 5% above the base rate in accordance with §1 of the Discount Transition Act. We reserve the right to claim higher damages in case of default of payment. The buyer is free to prove that no damage or not in the amount mentioned above has been caused by the delay. The provision of § 353 HGB (German commercial code) remains unaffected.
6. The buyer may only offset our payment claims against undisputed or legally established claims.

#### **IV. Delivery deadline**

1. The date stated in our order confirmation is decisive. Compliance with the deadline is subject to the timely receipt of all documents, permits, releases to be supplied by the purchaser and compliance with the agreed terms of payment and other obligations. If these prerequisites are not fulfilled in time, the delivery period shall be extended by the duration of the delay.
2. The delivery deadline is met if the operational shipment has been dispatched or collected within the agreed period. If delivery is delayed for reasons for which the purchaser is responsible, the deadline is deemed to have been met if notification of readiness for dispatch is given within the agreed period.
3. Force majeure, strikes, incapacity through no fault of our own or one of our suppliers as well as a delayed delivery of essential raw and construction materials for which we are not responsible shall extend the delivery period by the duration of the interference. If the delay in delivery lasts longer than one month, the buyer is entitled to withdraw from the contract. In these cases, he cannot assert any claims for compensation.
4. In the event of non-compliance with the delivery period also for reasons other than those mentioned in clause 3, the buyer shall grant us a reasonable extension.
5. If dispatch or delivery is delayed at the request of the purchaser, the purchaser may be charged storage fees amounting to half a percent of the invoice amount for each month or part thereof, beginning one month after notification of readiness for dispatch. The storage fee is limited to 5% of the invoice amount, unless we can prove higher costs.
6. Partial deliveries are possible. In the case of custom-made products in the field of technical glass, over-deliveries of 10% (at least 1 piece) are deemed to be agreed.
7. Products in standard design are taken back on the basis of written agreements. The value will be credited after deduction of a contribution to the costs of reworking. As a rule, the return costs amount to 40-50 % of the order value, but at least EURO 250.00. Any additional testing and reconditioning costs that may be necessary will be invoiced separately. Each return consignment should be dispatched carriage paid. Individual and spare parts, accessories and fittings whose production has been discontinued or which were specially manufactured for the customer will not be credited.

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

1. The risk shall pass to the customer at the latest when the delivery parts are dispatched, even if partial deliveries are made or the supplier has assumed other services, e.g. shipping costs or delivery and installation. At the request of the customer, the supplier will insure the consignment against theft, breakage, transport, fire and water damage and other insurable risks at the customer's expense.

2. If dispatch is delayed due to circumstances for which the Purchaser is responsible, the risk shall pass to the Purchaser on the day of readiness for dispatch; however, the Supplier shall be obliged, at the request and expense of the Purchaser, to arrange for the insurance policies requested by the Purchaser.

3. Delivered items, even if they have minor defects, are to be accepted by the customer without prejudice to the rights under Section VII.

## **VI. Reservation of ownership**

1. The supplier retains ownership of the delivery item until all payments arising from the delivery contract have been received.

2. The supplier is entitled to insure the delivery item at the expense of the customer against theft, breakage, fire, water and other damage, unless the customer has demonstrably taken out the insurance himself.

3. The customer may neither pledge the delivery item nor assign it as a guarantee. In the event of seizure, confiscation or other dispositions by third parties, he must inform the supplier immediately.

4. If the customer acts in violation of the contract, in particular in case of default of payment, the supplier is entitled to take back the goods after a reminder and the customer is obliged to hand them over.

5. The purchaser is entitled to process and sell the reserved goods in the ordinary course of business as long as he is not in default. Pledging or transfer by way of guarantee is not permitted. By way of security, the Purchaser hereby assigns to the Supplier in full any claims arising from resale or on any other legal grounds (insurance, tort) in respect of the reserved goods. The supplier revocably authorises the customer to collect the claims assigned to the supplier for the supplier's account in his own name. This collection authorization can only be revoked if the customer does not properly meet his payment obligations.

6. In the event of access by third parties to the reserved goods, in particular seizures, the Purchaser shall draw attention to the Supplier's ownership and notify the Supplier immediately so that the Supplier can enforce its ownership rights. If the third party is not able to reimburse the Supplier for the judicial or extrajudicial costs incurred in this connection, the Purchaser is liable for these costs.

## **VII. Liability for defects of the delivery**

For defects in the delivery, which also includes the absence of expressly warranted characteristics, the supplier is liable as follows, excluding further claims, notwithstanding Section IX, 4

1. All those parts which prove to be unusable or significantly impaired in their usability within 6 months of commissioning as a result of a circumstance prior to the transfer of risk - in particular due to faulty design, poor materials or defective workmanship - shall be repaired or replaced free of charge at the discretion of the supplier. The Supplier must be notified immediately in written form of the discovery of such defects.

Replaced parts become the property of the supplier. If dispatch or commissioning is delayed through no fault of the supplier, liability shall expire at the latest 12 months after the transfer of risk. For essential third-party products, the liability of the supplier is limited to the assignment of the liability claims to which he is entitled against the supplier of the third-party product.

2. The right of the purchaser to assert claims arising from defects shall in all cases be subject to a limitation period of 6 months from the time of the complaint made in good time, but at the earliest on expiry of the warranty period.

3. No liability is accepted for damage caused for the following reasons: Unsuitable or improper use, faulty assembly or commissioning by the Purchaser or third parties, natural wear and tear, faulty or negligent handling, unsuitable operating materials, replacement materials, defective assembly work, chemical, electrochemical, electrical influences or other work contractual performances, unless they are attributable to a fault on the part of the Supplier.

4. After consultation with the Supplier, the Purchaser shall grant the Supplier the necessary time and opportunity to carry out all repairs and replacement deliveries which the Supplier deems necessary at its reasonable discretion, otherwise the Supplier shall be released from liability for defects. Only in urgent cases of danger to operational safety and to prevent disproportionately large damage, in which case the supplier must be notified immediately, or if the supplier is in default with the rectification of the defect, does the customer have the right to rectify the defect himself or have it rectified by third parties and to demand reimbursement of the necessary costs from the supplier.

5. Of the direct costs arising from the repair or replacement delivery, the Supplier shall bear - insofar as the complaint proves to be justified - the costs of the replacement part including dispatch as well as the reasonable costs of dismantling and installation, furthermore, if this can be reasonably demanded in the individual case, the costs of any necessary provision of his fitters and assistants. In all other respects, the customer shall bear the costs.

6. The warranty period for the replacement part and the repair shall be three months, but shall run at least until the expiry of the original warranty period for the delivery item. The period for liability for defects in the delivery item shall be extended by the duration of the interruption in operation caused by the repair work.

7. Any modifications or repair work carried out improperly by the Purchaser or third parties without the Supplier's prior approval shall invalidate any liability for the resulting consequences.

8. Further claims of the purchaser, in particular a claim for compensation for damages not incurred on the delivery item itself, are excluded. This exclusion of liability shall not apply in the case of intent, gross negligence on the part of the owner or senior staff or culpable breach of material contractual obligations. In the event of culpable violation of essential contractual obligations, the supplier shall be liable - except in cases of intent and gross negligence on the part of the owner or executive staff - only for reasonably foreseeable damage typical of the contract.

Furthermore, the exclusion of liability shall not apply in cases where liability is assumed under the Product Liability Act for personal injury or property damage to privately used objects in the event of defects in the delivery item. It shall also not apply in the absence of properties that are expressly warranted if the warranty was specifically intended to protect the customer against damage that did not occur to the delivery item itself.

### **VIII. Liability for secondary obligations**

If, through the fault of the supplier, the delivered item cannot be used by the purchaser in accordance with the contract as a result of omitted or faulty execution of suggestions and advice given before or after conclusion of the contract as well as other secondary contractual obligations, in particular the instructions for the operation and maintenance of the delivered item, the provisions of Sections VII and IX shall apply accordingly, excluding further claims of the purchaser.

### **IX. Right of the customer to withdraw from the contract and other liability of the supplier**

1. The Purchaser may withdraw from the contract if the Supplier is finally unable to perform the entire contract before the transfer of risk. The same applies in the event of incapacity on the part of the supplier. The Purchaser may also withdraw from the contract if, in the case of an order for similar items, the execution of part of the delivery becomes impossible in terms of quantity and he has a justified interest in refusing a partial delivery; if this is not the case, the Purchaser may reduce the consideration accordingly.
2. If there is a delay in delivery within the meaning of Section IV of the Terms and Conditions of Delivery and the Customer grants the Supplier in default a reasonable extension of time with the express declaration that he will refuse to accept the delivery after expiry of the extension and if the extension is not complied with, the Customer shall be entitled to withdraw from the contract.
3. If the impossibility occurs during the delay in acceptance or through the fault of the purchaser, the purchaser remains obliged to pay the consideration.
4. Furthermore, the customer has the right to cancel the contract if the supplier allows a reasonable period of grace granted to him for the repair or replacement delivery with regard to a defect for which he is responsible within the meaning of the terms of delivery to expire fruitlessly through his own fault. The right to rescind the contract also exists in other cases of failure of the repair or replacement delivery by the supplier.
5. Excluded are all other further claims of the customer, in particular for termination or reduction as well as for compensation for damages of any kind, including those damages that did not occur to the delivery item itself. This exclusion of liability shall not apply in the event of intent, gross negligence on the part of the owner or senior staff or culpable breach of material contractual obligations. In case of culpable violation of essential contractual obligations, the supplier is liable - except in cases of intent and gross negligence of the owner or executive employees - only for reasonably foreseeable damage typical for the contract. Furthermore, the exclusion

of liability shall not apply in cases where liability is assumed under the Product Liability Act for personal injury or property damage to privately used objects in the event of defects in the delivery item. It shall also not apply in the absence of properties that are expressly warranted if the warranty was specifically intended to protect the customer against damage that did not occur to the delivery item itself.

#### **X. Data collection and storage for own business purposes**

According to § 28 b number 4 German Federal Data Protection Act (BDSG) we point out that for the purpose of deciding on the establishment, implementation or termination of the contractual relationship, probability values are collected or used, the calculation of which includes address files.

#### **XI. Jurisdiction and applicable law**

For all disputes arising from the contractual relationship, if the customer is a registered trader, a legal entity under public law or a special fund under public law, legal action shall be taken at the court that is competent for the head office or the branch of the supplier that carries out the delivery. The supplier is also entitled to bring an action at the customer's head office. German law applies. The application of UN purchase law is excluded.

**The German original of the General Terms and Conditions of ACI Industriearmaturen GmbH is judicially and legally binding. This English translation is for information purposes only.**