

General Terms of Services and Delivery of

SABURA INTERNATIONAL GmbH



1. General Provisions

1.1 Any agreement - in particular those modifying these Terms - shall only become binding by our confirmation in writing.

1.2 Any and all supplies and services to be furnished by us at any time, including proposals, technical advice and assistance as well as any other supplementary services (referred to as supplies or deliveries hereafter), shall be based, in a business-to-business relation, exclusively on the present General Terms. Any other terms and conditions are not accepted as part of the contract, even if we do not expressly reject them or accept payments without reservation.

1.3 Our offers are generally not binding. However, if it should be binding, it shall be revised and adapted taking into account the interests of both parties, if, after the submitting of the offer, modifications of the contractual obligations are necessary to meet new or modified legal requirements or new requirements of public authorities and inspection boards. This shall apply respectively after the acceptance of the offer. If the Purchaser's subsequent confirmation deviates from our confirmation, he will draw our attention to these divergences.

2. Prices, Payment, Securities

2.1 The prices quoted are understood "ex works" (EXW 59174 Kamen GERMANY) and exclude accessory charges (such as packing, freight, insurance, storage, inspection by third parties and any other additional charges). If we agreed to render installation or erection services and no other agreement has been concluded, the Purchaser shall bear all necessary additional costs such as travel expenses, costs for transportation of tools or the cost of electricity, water or compressed air in addition to the agreed prices. The due statutory turnover (value added) tax (VAT) will be added to the prices agreed (at present 19% in Germany). In the case of export deliveries, any and all taxes, customs duties and other public charges payable by us abroad shall be reimbursed by the Purchaser.

2.2 Free and net payment to our banking account(s) must be made by the dates agreed.

2.3 The Purchaser shall only have a right of retention and be entitled to set off counterclaims to the extent that such counterclaims are undisputed or have been validly decided. If this is not the case, retention shall only be possible if the counterclaim results from the same contractual relation as our claim and is in proportion to our claim.

2.4 Should the Purchaser be in arrears with payment, interest in accordance with the average corresponding bank rates for overdraft facilities of business accounts, however no less than the statutory interest rate, will be charged from the day following the payment date and without any further reminder.

2.5 In the event of a delay in payment or danger to our claims due to a significantly impaired creditworthiness of the Purchaser, we shall be entitled to make due immediately all claims we have regardless of the terms of any bills of exchange or to demand securities. We shall also be entitled to affect any outstanding supplies against prepayment only or against the provision of securities.

2.6 Unless agreed upon otherwise, 1/3 (one third) of the product price is due for payment within 7 days of order. The second payment of 1/3 (one third) of the product price is due for payment within 7 days of readiness for delivery. The third payment of 1/3 (one third) of the product price is due for payment within 7 days after delivery and assembly.

3. Deadlines, Obstacles to Compliance

3.1 The deadlines shall apply only on condition that all details of the order have been clarified in due time, that all necessary documents and approvals to be obtained by the Purchaser have been procured in due time, that all drawings have been approved, that, if applicable, any amount agreed upon as down payment has been received by us in due time and that, if applicable, any securities agreed upon have been provided in due time. A further condition is the completion in due time of preparatory services for construction and erection to be provided by the Purchaser, in particular provision free of charge for us of electrical power, gas, water and any required auxiliary workers.

3.2 The agreed delivery dates shall be considered as fulfilled with the notice of readiness for dispatch, especially if the goods to be supplied cannot be dispatched on time for reasons for which we cannot be held responsible.

3.3 Should we be hindered in fulfilling our obligations due to the event of unforeseen circumstances affecting us or our sub-suppliers and/or sub-contractors and which we could not avoid with due care based on the circumstances of the specific case, e.g. war, intervention by a higher authority, internal unrest, natural forces, accidents, strikes and lockouts, other interruptions and delays in the supply of major operating material or pre-materials, the delivery deadlines shall be extended by the duration of the interruption and a reasonable start-up time. Should the fulfillment of our obligations become impossible for us due to the obstacle or become unacceptable, we may terminate the contract; the Purchaser shall also be entitled to do so if he cannot be reasonably asked to receive or accept the goods or services due to the delay.

3.4 Should the Purchaser credibly demonstrate that he has sustained any loss due to a delay through our fault, he shall be entitled to claim compensation. Compensation for delayed delivery for each full week of delay is 1/2 per cent, however no more than 5 per cent of the value of the parts of the deliveries which cannot be used appropriately due to the delayed delivery. Both claims for damages due to delays in delivery as well as claims for damages instead of the services rendered which exceed the given limits are excluded in all cases of delayed delivery, even after a delivery deadline has expired that may have been given to us. This does not apply in cases of willful damage, gross negligence or cases in which liability is obligatory, especially due to death, injury or detriment of health. The Purchaser may only withdraw from the contract in the scope of the legal provisions insofar as the delay in our deliveries is our responsibility. The above provisions imply no change in the burden of proof to the detriment of the Purchaser.

4. Acceptance

4.1 If an acceptance test has been agreed, it must be carried out immediately upon notification of readiness for acceptance. The Purchaser bears the costs of the acceptance.

4.2 An acceptance test is also carried out upon our request or if specific properties of the goods to be delivered have been agreed. This shall also apply to completed partial deliveries.



4.3 The Purchaser must ensure the conditions required for carrying out an acceptance test. With the exception of our labour costs, the Purchaser shall bear all costs arising in conjunction with the acceptance test.

4.4 Rights pursuant to Section 8 notwithstanding, the Purchaser shall not be entitled to withhold an acceptance due to insignificant defects.

4.5 Should the acceptance test not – or not completely – be carried out in due time for reasons for which we are not responsible, the goods to be delivered shall be deemed accepted following our written demand and after expiry of a reasonable period allotted by us when this consequence has been indicated by us explicitly.

4.6 The delivered goods shall be deemed accepted if they are put into operation without our prior consent.

5. Passage of Risk, Dispatch

5.1 Risk shall pass to the Purchaser, also in the case of deliveries with carriage paid and including cases where partial deliveries are made, as follows:

5.1.1 in the case of deliveries not including erection or assembly, as soon as the goods to be delivered are shipped or are collected. At the request and expense of the Purchaser, we shall insure deliveries against the usual transport risks;

5.1.2 in the case of deliveries including erection or assembly on the day of handover in own facility or, if agreed, following acceptance by the Purchaser.

5.2 If shipping, delivery, the commencement, the implementation of erection or assembly, receipt in own facility or acceptance are delayed for reasons imputable to the Purchaser or in case of the Purchaser's default of acceptance, risk shall pass to the Purchaser.

5.3 Means and route of transportation shall be at our discretion. The same shall apply to the selection of the forwarding agent or carrier.

5.4 Goods to be delivered which have been notified as ready for dispatch must be called immediately, otherwise we shall be entitled, at our discretion, to store them at the cost and risk of the Purchaser and to invoice them as if delivered.

6. Reservation of Ownership, Nondisclosure and Data Protection

6.1 Ownership (title and right of disposal) of the items supplied shall not pass to the Purchaser until all claims have been fulfilled, in particular all balances to which we are entitled against the Purchaser within the framework of business relations.

6.2 Treatment or processing of the goods supplied under reservation will be carried out for us in our capacity as manufacturer according to the legislative intent of § 950 BGB (German Civil Code). Goods processed shall be considered goods supplied under reservation as specified in Section 7.1. Should the Purchaser process, combine or mix the goods supplied under reservation with other goods, we shall be entitled to co-ownership of the new property in the ratio of the objective value of the goods supplied under reservation to the objective value of the goods added. Should our ownership of the goods become void due to processing, combining or mixing, the Purchaser shall already at this moment transfer to us the Purchaser's right of ownership of the new stock or new property to an amount which covers the objective value of the goods supplied under reservation and the Purchaser, free of charge for us, shall hold the said goods in safe custody. Our rights of co-ownership so created shall be treated as goods supplied under reservation as specified in Section 6.1.

6.3 The Purchaser shall be allowed to sell the goods supplied under reservation exclusively in the normal course of business subject to his normal terms of delivery and only as long as the Purchaser is not in arrears with payment and provided that the claims resulting from the sale are transferred to us in accordance with Clause 6.4. The Purchaser shall not be entitled to any other disposal of the goods supplied under reservation.

6.4 Claims of the Purchaser resulting from resale of goods supplied under reservation, whether processed or not, or combined with other goods not delivered by us, shall be transferred at this moment to us in an amount necessary to cover the invoiced value or the amount of co-ownership according to Section 6.2; this shall also apply to balances which are due to the Purchaser if the claims resulting from resale are entered into a current account.

7. Liability for Defects

We assume liability for defects as follows:

7.1 All deliveries are to be rectified, replaced by new parts or rendered again free of charge at the discretion of DCC which display a defect within the warranty period – regardless of the period of service – provided the cause of the defect already existed at the time of the passage of risk.

7.2 Claims for defects become time-barred within twelve months after commissioning.

7.3 Notification of defects must be submitted immediately and in writing.

7.4 The Purchaser shall first give us the opportunity to rectify the defect within a reasonable period.

7.5 We do not assume liability for parts subject to wear e.g. filters, pvc wall covering.

8. Other Claims for Damages

8.1 We shall be liable for damages and reimbursement of expenses solely based on the legal statutes, subject to the following provisions.

8.2 Claims for damages and reimbursement of expenses (referred to in the following as claims for damages), regardless of the legal reason, in particular due to infringement of obligations resulting from the relationship under the law of obligations and from non-permitted activities, are excluded.

8.3 Liability for indirect damages and consequential damages such as downtime, loss of profit, or financing costs are excluded.

8.4 These restrictions (10.2 and 10.3) do not apply if liability is obligatory, e.g. according to product liability legislation, in cases of willful damage or gross negligence, death, injury or detriment of health, or due to the acceptance of a guarantee for the properties of an item or due to the infringement of material contractual obligations. Material contractual duties are in particular those, which are required in order to achieve the purpose of the Agreement or the fulfillment of which enable the proper performance of the Agreement in the first place and on the observation of which the buyer may rely, the liability is insofar limited to the compensation of the contractually typical and foreseeable loss, however, not to cases of willful damage or gross negligence or cases in which liability is obligatory due to death, injury or detriment of health.



8.5 The temporal limitation of liability according to this section 10 shall be determined by the liability for defects (clause 8.3).

8.6 The above liability provisions involve no change in the burden of proof to the detriment of the Purchaser.

9. Impossibility; Contract Modification

9.1 Insofar as the performance of the agreed deliveries is impossible, the Purchase shall be entitled to demand damages if we are responsible for the impossibility. However, the claim for damages by the Purchaser shall be limited to 10% of the value of the part of the delivery which cannot be used appropriately due to the impossibility. This limitation does not apply in cases of willful damage or gross negligence or cases in which liability is obligatory due to death, injury or detriment of health; this involves no change in the burden of proof to the detriment of the Purchaser. The right of the Purchaser to withdraw from the contract remains unaffected.

9.2 Insofar as unforeseeable circumstances in the sense of Section 4.3 result in considerable changes to the economic significance or the contents of the deliveries or considerably influence our operation, the contract shall be modified appropriately taking into consideration good faith. Insofar as this is not economically acceptable, we shall be entitled to withdraw from the contract. If we intend to make use of this entitlement to withdraw from the contract, we undertake to inform the Purchaser immediately on becoming aware of the consequences of the event, even if an extension to the delivery date had initially been agreed with the Purchaser.

10. Export Licenses, Transfer of Contractual Rights and Obligations

10.1 The export of contractual items may – e.g. due to their nature or purpose – be subject to export approval.

10.2 We are entitled to transfer our rights and duties from this Contract to third parties. The transfer shall not become effective if the Purchaser objects in writing within four weeks after receipt of corresponding notification; we shall refer to this in the notification.

11. Place of Delivery, Venue, Applicable Law

11.1 Place of delivery for our supplies is the location of the delivery plant. Should we also have to perform work (e.g. erection), place of delivery shall be the location where the work is to be rendered. For the payment obligation of the Purchaser, payment of debts shall be rendered at the bank quoted in our invoice.

11.2 The exclusive venue for settlement of any legal disputes, including bills of exchange and cheque collection by way of enforcement shall be Kamen in the Federal Republic of Germany. However, we are also entitled to elect to institute proceedings at the place of domicile of the Purchaser or at the place of the censurable act.

11.3 The legal relationship between the Purchaser and us shall be governed only by the laws of the Federal Republic of Germany, excluding the UN Convention on the International Sale of Goods (CISG).