

# General Conditions of Sale and Delivery

## 1. Applicability of Conditions

- 1.1 These general conditions of sale and delivery apply to all (including future ones) offers, contracts, deliveries and other services, including consulting services and information, unless they are changed or excluded with our explicit, written consent. These conditions are deemed to have been accepted by the latest when goods or services are received.
- 1.2 The customer's general terms of business shall only apply to the extent that we have agreed to them in writing.

## 2. Protective Rights

- 2.1 Drawings, technical specifications, instructions for assembly, operation and maintenance, cost estimates and other papers and documents are our property. They may not be copied, reproduced, placed at the disposal of third parties or disclosed in any other form without our written consent.
- 2.2 If other persons' patent, sample or trademark rights are infringed by the production and delivery of special articles according to drawings, sketches, existing samples or specifications provided by the orderer, then the orderer must bear all the losses which we incur as a result and in particular has to make good the profit thus lost.

## 3. Offer and Conclusion of a Contract

- 3.1 A contract is not deemed to have been concluded until we have issued a written confirmation of order or invoice or effected delivery.
- 3.2 Information, drawings, illustrations, technical data, weight, measures and performance specifications contained in brochures, catalogues, circulars, advertisements, price lists and the documentation forming part of the offer are only to be considered as approximate values. We reserve the right – even during the delivery period – to make technical changes in respect of construction, form, material etc.

## 4. Prices

- 4.1 Our prices are expressed in CHF. The prices agreed are decisive in the first place. If an order is placed without the price being stated explicitly, then the price is determined according to our price list which is valid on the day on which a contract is entered into. Prices are free Swiss border, duty not paid. Packaging in cardboard boxes is included. Other types of packaging (wooden crates etc.) will be charged to the consignee. Fees for insurance, express and Car-go-Rapid must always be paid by the orderer, in addition to the currently valid value-added-tax.

- 4.2 If the price factors «wages and materials» go up after an order has been confirmed, an appropriate price increase is deemed to have been agreed upon. In the event of an increase of over 10 % of the overall price originally agreed upon, we undertake to provide detailed subsequent proof of the change in costs.

## 5. Dispatch and Transfer of Risk

- 5.1 The goods are carefully packaged for dispatch in a manner that is customary in this industry.
- 5.2 Risk passes to the orderer by the latest at that point in time when the goods are taken over by the person who is to carry out the transport or when they leave our works respectively our distribution warehouse for use, regardless of who is paying the freight costs. If dispatch is delayed due to circumstances for which we are not responsible, then risk passes to the customer as soon as the goods are held ready, at the latest, however, when notification of readiness for dispatch is sent to the customer. In this case we store the goods at the customer's expense. We bill a monthly charge of at least 0.5 % of the invoiced amount for storage of such delivery.

## 6. Delivery

- 6.1 The written confirmation of order is decisive with regard to the extent of our obligation to deliver. Subsidiary agreements and amendments need to be confirmed by us in writing.
- 6.2 Delivery periods begin on the date of our confirmation of order, however, only if all details of the order have been clarified in advance and all required confirmations, permits and clearances have been supplied and payment as agreed upon has been received. Delivery periods are deemed to have been complied with if goods leave the factories or the distribution warehouse within the term of delivery or on the delivery deadlines.
- 6.3 Delivery periods and deadlines indicated as being «approximate» may deviate by up to four weeks from the time stated.
- 6.4 Delivery periods are extended by the same period of time for which the customer is in default towards us in respect of his obligations. The same applies to delivery deadlines.
- 6.5 We are only liable for losses due to delay of any type as a result of impossibility for which we are responsible in case of criminal intent or gross negligence. We are not answerable for deliveries which are delayed or not effected by sub-contractors.
- 6.6 If the delivery is delayed due to negligence on our part, then the orderer can withdraw from the contract upon expiry of an extension of at least 6 weeks, of which we were given notice. The additional period of time commences on the date on which we receive notification thereof.

- 6.7 If the orderer incurs losses due to a delay arising as a result of negligence on our part, then he has a right to compensation for default amounting to ½ % for each complete week of delay, however, a maximum of 10 % of the amount of the invoice for the delayed deliveries and services shall apply, unless this compensation exceeds the proven losses.

- 6.8 In the case of objects of which a large quantity are ordered we are entitled to make partial deliveries within the times fixed for delivery.

- 6.9 Occurrences of force majeure entitle us to postpone the (partial) delivery for the duration of the impediment and a reasonable starting up time. If execution of the contract becomes unacceptable to one of the parties, then such party may withdraw from the contract for the remainder order in excess of any partial deliveries. In this case we are not obliged to take back partial deliveries which have already been effected and are entitled to invoice for performance already rendered.

Occurrences are classed as force majeure if they are a severe impediment to us or completely prevent our making delivery, such as e.g. currency and trade-policy measures or other acts of state, strikes, lock-outs, interruption of operations (e.g. fire, breakdown of machines or tools, lack of raw materials or energy) or obstacles on traffic ways, even if they occur to our suppliers or sub-contractors.

Nor are we to be held responsible for the above described circumstances if they occur during a delay which already exists. We will inform the orderer as soon as possible of the beginning and end of such impediments in cases of import.

- 6.10 Transport insurance will only be concluded upon explicit instructions from the orderer and will be for his account.

## 7. Payment

- 7.1 Our deliveries are payable in accordance with a separate, written agreement.
- 7.2 Even if the orderer states otherwise, we are entitled to deduct payments from the former's older debts or, if costs and interest have accrued, to first credit payments to these costs, then to the interest and finally to the main performance.
- 7.3 If partial performance has been agreed upon, we shall invoice partial deliveries. Unless all invoices for past partial deliveries have been paid, we are not obliged to produce or deliver further parts.
- 7.4 A payment is considered to have been made when we have the amount at our disposal. In case of acceptance of a bill, the discount and all expenses shall be charged to the orderer. If a bill is not discounted or not cashed in good time, then our entire residual claim becomes due for

payment. In case of cheques, payment is not considered to have been made until a cheque has been cashed.

- 7.5 A right of retention only exists insofar as it is based on the same contractual relationship. Any further rights of retention are excluded. Setoff against our debts is only a possibility if setoff is effected with an undisputed debt or one which has been judged finally and conclusively.
- 7.6 If facts become known to us which give rise to doubts about the orderer's creditworthiness, or if the orderer is over two weeks behind with a part-payment, then our entire residual claim shall become due for payment, even if bills were accepted by us. Moreover, we may withdraw from the contract upon written notification to the orderer and demand compensation for losses incurred.
- 7.7 If facts become known to us which give rise to doubts about the orderer's creditworthiness, or if the orderer is over two weeks behind with a part-payment in the case of agreed partial deliveries, then our entire residual claim shall become due for payment, even if bills were accepted by us. Moreover, we may withdraw from the contract upon written notification to the orderer and demand compensation for losses incurred. If partial deliveries were previously effected, then withdrawal from the contract extends to the balance of delivery still outstanding.

## 8. Non-Performance

If the orderer refuses to accept the goods, we may give him a reasonable period of time to accept them and, if such period expires without acceptance occurring, we may withdraw from the contract or demand compensation for losses. Subject to proof of greater losses we can demand 25 % of the agreed pecuniary consideration (net amount) as compensation for losses, unless the orderer proves that no loss or a significantly lower loss was incurred.

## 9. Warranty

- 9.1 Our fittings and systems correspond to the recognised state-of-the-art.
- 9.2 We guarantee that at the time of transfer of risk our products are free of manufacturing and material defects which invalidate or significantly diminish their value or serviceableness for the customary use as stipulated in the contract.
- 9.3 The warranty period amounts to six months. The term of warranty begins on the delivery date.
- 9.4 Defects – also the fact that guaranteed properties are missing or there is a deviation from a guaranteed piece number – should be notified to us in writing immediately after their discovery, at the latest within fourteen days of receipt of the goods. Secret defects which could not have been discovered within this period of time even after careful examination should be notified to us immediately upon their discovery, however within the warranty period defined under clause 9.3 above.

- 9.5 If the orderer proves within the warranty period defined in clause 9.3 above that the products do not conform to the warranty, then we select one of the following options:

- a) that the defective part be sent back to us for repair or
- b) that the orderer holds the defective part at our disposal and gives us an opportunity to carry out the repair.

Should the orderer demand that work under warranty claims be carried out at a place of his choice, then we can comply with this request whereby parts which come under the warranty will not be charged.

- 9.6 If the repair is definitely a failure, then the orderer may request a reduction in payment or withdraw from the contract.
- 9.7 We do not pay compensation for consequential losses as a result of defects, in particular stoppages in production or lost profit. Claims on the part of the orderer to compensation for consequential losses as a result of defects are also excluded to the extent that such claims are based on repair attempts.
- 9.8 If changes are made to our products, spare parts changed, foreign parts added or if our operating or maintenance instructions are not complied with, then all warranty lapses.

Our JRG Sanipex-System is to be viewed as a whole. If either pipes or fittings from another system or another manufacturer are used, then our warranty does not apply, even if those products have a test mark.

The same applies to damage which is based on extraordinary operating circumstances. Any liability for normal wear and tear is excluded.

- 9.9 Only the direct buyer has a warranty claim. Such claims are non-assignable.
- 9.10 All liability due to improper packaging or loading is excluded once the railway or other freight haulers accept the delivery without any further ado.

## 10. Limitation of Liability

Claims for compensation for damages from positive infringement of claims, from negligence upon entering into the contract and from unlawful behaviour are excluded against us as well as against our vicarious agents or our vicarious officers, unless it is a case of malicious or gross negligence. If it is a case of slight negligence, then we are only liable for losses which are typical of the contract and could reasonably be foreseen. The limitation of liability does not apply in those instances in which, according to product liability law, liability arises for personal injury or material damage to privately used objects in case of defects in the product.

## 11. Secrecy

Unless there is a written agreement to the contrary, information submitted to us in connection with orders shall not be considered to be confidential.

## 12. Returns

Returns which are not a result of a wrong delivery must be approved of by us in advance and even if they are returned in the original packaging they are still subject to a handling fee of at least 20 % of the sum of the invoice for the goods returned.

## 13. Partial Invalidity, Salvatory Clause

- 13.1 Should one of the provisions in these business conditions or a condition within the framework of other agreements be or become invalid, this shall not affect the validity of all the other provisions or agreements.

## 14. Foundry Orders

If we carry out foundry orders to customers' specifications, then the general terms of sales and delivery of the Swiss Association of Foundries (GVS) shall apply.

## 15. Applicable Law, Place of Jurisdiction

- 15.1 These conditions of sale and delivery and our entire legal relationships with the orderer shall be governed by the law of Switzerland.
- 15.2 As far as this is legally permissible, Sissach shall be the sole place of jurisdiction for all disputes which arise directly or indirectly as a result of the contractual relationship.

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