

General Terms of Sale and Delivery of the company Kühner Wärmetauscher GmbH & Co. KG

§ 1 Scope of Application

Our Terms of Sale and Delivery apply only in relation to entrepreneurs within the meaning of section 310, subsection (1), sentence 1 of the German Civil Code [BGB].

§ 2 Conclusion of a Contract

1. Our Terms of Sale and Delivery apply exclusively. Terms which conflict with or deviate from our Terms of Sale and Delivery are objected to by us, unless we have given our express written consent to their application. Our Terms of Sale and Delivery shall apply even if we carry out the delivery to the customer unconditionally despite knowing of terms of the customer which conflict with or deviate from our Terms of Sale and Delivery.

2. Our Terms of Sale and Delivery shall also apply to all future transactions with the customer.

3. No amendments or additions to this contract have been made. Agreements, particularly verbal agreements and representations, shall only become binding upon written confirmation.

4. We shall retain the rights of title and copyrights in illustrations, drawings, specifications, calculations, samples and cost estimates, as well as in our computer programmes and the quotation documents. These must not be made accessible to third parties. This also applies to such written documents which are marked „confidential“. The customer shall require our express written consent prior to passing them on to third parties.

5. Our quotation shall be subject to change without notice, except where otherwise ensues from our acknowledgement of the order.

§ 3 Prices - Payment Terms

1. Except where otherwise ensues from our quotation and/or our acknowledgement of the order, our prices shall apply „ex works“, excluding packaging costs, not unloaded and not insured. The packaging shall be invoiced separately.

2. We reserve the right to change our prices accordingly, if cost decreases or cost increases occur after the conclusion of the contract, particularly as a result of collective agreements or price changes in real terms. We shall prove these to the customer on request.

3. Statutory value-added tax is not included in our prices. It shall be shown separately at the statutory rate prevailing on the invoice date.

4. The deduction of a cash discount shall require special written agreement.

5. Except where otherwise ensues from the quotation and/or the acknowledgement of the order, the price/fee shall be due and payable net (without any deduction) within 30 days of the invoice date. The consequences of default in payment shall be governed by the statutory rules.

6. The customer shall only be entitled to rights of set-off, if its counterclaims have been determined with legal finality, are uncontested or have been recognised by us. Additionally, the customer shall be authorised to exercise a right of retention in so far as its counterclaim is based on the same contractual relationship.

§ 4 Delivery Period

1. The prerequisite for commencement of the delivery period stated by us is that all technical issues must have been cleared up.

2. Furthermore, the prerequisite for compliance with our delivery obligation

is that the customer's obligation must have been properly fulfilled in due time. The plea of non-performance of the contract remains reserved.

3. If the customer defaults on taking delivery or culpably breaches other duties of co-operation, we shall be entitled to demand compensation for the loss resulting to us in this respect, including any extra expenditures. Claims beyond the foregoing remain reserved.

4. In so far as the prerequisites under subsection 3 are present, the risk of accidental destruction or accidental deterioration shall pass to the customer at such time as the customer enters into default on taking delivery or making payment.

5. We shall be liable under the statutory provisions in so far as the underlying contract is a transaction where time is of the essence within the meaning of section 286, subsection II, no. 4 of the German Civil Code or section 376 of the German Commercial Code [HGB]. We shall also be liable under the statutory provisions in so far as the customer is entitled to assert that, as a consequence of default in delivery which is imputable to us, it no longer has any interest in the further performance of the contract.

6. Furthermore, we shall be liable under the statutory provisions in so far as default in delivery is due to an intentional or grossly negligent breach of contract imputable to us. Fault on the part of our representatives or our agents in contract shall be attributable to us. Except where default in delivery is due to an intentional breach of contract imputable to us, our liability for damages shall be limited to the foreseeable loss typically occurring.

7. We shall also be liable under the statutory provisions in so far as default in delivery imputable to us is due to culpable breach of a material contractual duty. In this case, however, liability for damages shall be limited to the foreseeable loss typically occurring.

8. Moreover, in the event of default in delivery, we shall be liable for liquidated default-related damages at the rate of 0.5 % of the delivery value for every full week of default, but capped at 5 % of the delivery value.

9. If the customer terminates the contract, we shall be entitled, without further proof of the loss incurred, to demand up to 5 % of the delivery value or demand compensation for the actual outlay.

10. Further statutory claims and rights of the customer remain reserved.

§ 5 Passage of Risk - Packaging Costs

1. Except where otherwise ensues from our quotation or from our acknowledgement of the order, delivery „ex works“ is agreed upon.

2. The return of packaging shall be governed by separate agreements.

3. We shall effect transportation insurance for the delivery, in so far as the customer so wishes. The costs arising in this respect shall be borne by the customer.

§ 6 Liability for Defects

1. Defects in the workmanship of the item purchased which become apparent after acceptance shall only be assertable, if they are reported to us without undue delay. Moreover, section 640, subsection 2 of the German Civil Code applies. A further prerequisite for defect-related claims by the customer is that the customer must have properly met its inspection and complaint-lodging obligations owed under section 377 of the German Commercial Code.

2. In so far as the item/performance is defective, we shall, at our option, be entitled to render supplementary performance in the form of defect elimination or delivery of a new defect-free item. In the case of defect elimination, we shall only bear the expenditures up to the sum of the purchase price/fee.

3. If supplementary performance fails, the customer shall, at its option, be entitled to demand rescission or abatement.

4. No liability for corrosion shall be assumed.

5. We shall be liable under the statutory provisions in so far as the customer asserts damage claims based on wrongful intent or gross negligence, including wrongful intent or gross negligence on the part of our representatives or our agents in contract. Except where intentional breach of contract is ascribed to us, liability for damages shall be limited to the foreseeable loss typically occurring.

6. We shall be liable under the statutory provisions in so far as we culpably breach a material contractual duty. In this case, however, liability for damages shall be limited to the foreseeable loss typically occurring.

7. Liability on account of culpable injury to life, body or health remains unaffected. This also applies to mandatory liability under the Product Liability Act [Produkthaftungsgesetz] and the General Act on Equal Treatment [Allgemeines Gleichbehandlungsgesetz, AGG].

8. Except where otherwise provided for above, liability shall be excluded.

9. The time-bar period for defect-related claims is 12 months, calculated from the passage of risk.

10. The time-bar period in the case of supplier recourse under sections 478 and 479 of the German Civil Code remains unaffected. It is five years, calculated from dispatch of the defective item.

§ 7 Joint Liability

1. Liability for damages beyond that provided for in section 6 is excluded, regardless of the legal nature of the claim asserted. This particularly applies to damage claims arising from culpa in contrahendo or on account of other breaches of duty and to tortious claims to compensation for property damage under section 823 of the German Civil Code.

2. The limitation under subsection 1 shall also apply in so far as the customer demands compensation for expenditures incurred in vain instead of asserting a claim to damages in lieu of performance.

3. In so far as liability for damages is excluded or limited in relation to us, this shall also apply in respect of personal liability for damages on the part of our white-collar employees, blue-collar employees, staff members, representatives and agents in contract.

4. An 18-month preclusion period shall apply to the time-barring of all claims which are not subject to time-barring on account of a defect in the item/performance. This preclusion period shall commence upon the customer's knowledge of the loss and of the identity of the party at fault.

§ 8 Securing the Retention of Title

1. We shall retain title to the goods delivered by us until receipt of all payments arising from the contractual relationship. If the customer acts in breach of the contract, particularly by defaulting on payment, we shall be entitled to repossess the item. Repossession of the item by us shall constitute rescission of the contract. We shall be authorised to realise the item after having repossessed it. The proceeds from realisation shall be credited against the amounts owed by the customer, less reasonable realisation costs.

2. The customer shall be obliged to treat with care the item delivered by us. In particular, the customer shall be obliged to adequately insure the item at its own expense against fire damage, water damage and theft on a replacement value basis. In so far as servicing and inspection work is necessary, the customer must carry this out in due time at its own expense.

3. In the event of attachment or any other intervention by a third party, the customer shall notify us in writing without undue delay, to enable us to bring an action in accordance with section 771 of the Code of Civil Procedure [ZPO]. In so far as the third party is not in a position to compensate us for the judicial and extrajudicial costs of an action under section 771 of the Code of Civil Procedure, the customer shall be liable for the loss incurred by us.

4. The customer shall be entitled to on-sell in the ordinary course of business the item delivered by us. However, the customer assigns to us here and now, in the sum of the final invoiced amount (including value-added tax) of our receivable, all receivables accruing to it against its customers or third parties from on-selling, regardless of whether or not the item delivered by us has been on-sold without having been processed or after having been processed. The customer shall, even after the assignment, remain authorised to collect this receivable. Our power to collect the receivable ourselves remains unaffected by this. However, we undertake not to collect the receivable as long as the customer meets its payment obligations out of the proceeds received, does not default on payment and, in particular, no petition for the opening of composition or insolvency proceedings is filed and no cessation of payment occurs. If this is the case, we shall be entitled to demand that the orderer inform us of the assigned receivables and the debtors concerned, provide us with all information necessary for collecting the receivables, hand over to us all pertinent documents and notify the debtors (third parties) of the assignment.

5. Processing or remodelling of our delivered item by the customer shall always be carried out on our behalf. If the item delivered by us is processed with other items not belonging to us, we shall acquire joint title to the new item in the ratio of the value of the item delivered by us (final invoiced amount, including value-added tax) in relation to the other processed items at the time of processing. Moreover, the item created by processing shall be governed by the same terms as those applicable to the item delivered under retention of title.

6. If the item delivered by us is inseparably mixed with other items not belonging to us, we shall acquire joint title in the new item in the ratio of the value of the item delivered by us (final invoiced amount, including value-added tax) in relation to the other mixed items at the time of mixing. If mixing is carried out in such a manner that the customer's item is to be regarded as the main item, it shall be deemed agreed that the customer shall transfer joint title to us on a pro-rata basis. The customer shall hold in safekeeping for us the sole property or joint property created in such a manner.

7. To secure our receivables against the customer, the customer also assigns to us the receivables accruing against a third party as a result of the item delivered having been connected to a plot of land.

8. We undertake to release, at the customer's request, the security interests to which we are entitled, in so far as the realisable value of our security interests exceeds by more than 10 % the receivables to be secured. We shall be responsible for selecting the security interests to be released.

§ 9 Place of Jurisdiction - Place of Performance

1. The exclusive place of jurisdiction for merchants is our registered office. However, we shall be entitled to also bring an action against the customer at the court which has jurisdiction over the customer's place of residence.

2. The laws of the Federal Republic of Germany apply. Application of the UN Sales Law (CISG) is excluded.

3. Our registered office shall be the place of performance, except where otherwise ensues from our quotation or our acknowledgement of the order.