

## General Terms and Conditions of Stiebel-Getriebebau GmbH & Co. KG

### I. General

Our general terms and conditions shall apply exclusively. We shall not recognise any terms and conditions of the Buyer which are contrary to or deviate from our General Terms and Conditions unless we have expressly agreed to their validity in writing. Our General Terms and Conditions shall also apply if we perform the delivery to the Buyer without any reservations in spite of knowing of terms and conditions of the Buyer which are contrary to or deviate from our General Terms and Conditions.

1. Unless agreed separately, a contract shall be brought about with the Supplier's written order acknowledgement.
2. The Supplier shall retain title and copyrights to specimens, cost estimates, drawings and similar information of a tangible or intangible nature – including in electronic form; they shall not be made accessible to third parties. The Supplier undertakes to only make information and documents designated by the Buyer as confidential accessible to third parties with the Buyer's consent.
3. The Supplier's written order acknowledgement shall govern the scope of delivery; in the event of a Supplier's quotation with a validity deadline and punctual acceptance, the quotation itself shall govern the scope of delivery provided that no order acknowledgement has been issued in good time. Collateral agreements and amendments shall require the Supplier's written acknowledgement.

### II. Price and payment

1. Unless otherwise specially agreed, the prices shall apply ex works including loading at the works but packing and unloading excluded. The prices shall be subject to the current rate of value-added tax.
2. Unless otherwise specially agreed, payment shall be made within 8 days less 2 % discount or 30 days net.
3. The Buyer shall only have the right to retain payments or offset them against any counterclaims insofar as its counterclaims are undisputed or have become res judicata.

### III. Delivery period, delay in delivery

1. The delivery period shall be governed by the agreements concluded by the contracting parties. Its observance by the Supplier shall presuppose that all commercial and technical matters have been clarified between the contracting parties and that the Buyer has discharged all its obligations, e.g. the provision of the necessary official certificates or permits or the making of a down payment. If this is not the case, the delivery period shall be prolonged by a reasonable period. This shall not apply if the Supplier is responsible for the delay.
2. Observance of the delivery period shall be subject to the proviso that the Supplier receives the correct deliveries in good time.
3. The delivery period shall be deemed to have been observed if, prior to its expiry, the goods have left the Supplier's work or notification has been issued that they are ready for shipment. If an acceptance inspection has to be performed, the acceptance date, alternatively notification that the goods are ready for the acceptance inspection, shall be decisive – except in the event of justified refusal to accept the goods.

4. If shipment or the acceptance inspection of the goods is delayed for reasons for which the Buyer is responsible, the costs incurred as a result of the delay shall be charged to it, starting one month after notification has been issued that the goods are ready for shipment or for the acceptance inspection.
5. If non-observance of the delivery period is attributable to Acts of God, labour disputes or other events which are beyond the Supplier's control, the delivery period shall be prolonged by a reasonable period. The Supplier shall notify the Buyer of the start and end of such circumstances as soon as possible.
6. The Buyer may rescind the contract without serving any notice if the Supplier becomes finally unable to effect full performance prior to the passing of risk. Moreover, the Buyer may rescind the contract if the execution of part of the delivery becomes impossible, in the event of an order, and the Buyer has a justified interest in refusing the partial delivery. If this is not the case, the Buyer shall pay the contractual price of the partial delivery. The same shall apply to Supplier's frustration of contract. Section VII.2 shall also apply.

If it becomes impossible to perform the contract or if it is frustrated while the Buyer is in default of acceptance or if the Buyer is solely or largely responsible for these circumstances, the Buyer shall remain obliged to effect payment.

7. If the Supplier is in default and the Buyer incurs damage as a result thereof, the Buyer shall be entitled to demand lump sum liquidated damages. They shall amount to 0.5 % for each full week of delay but to a total of max. 5 % of the value of that part of the total delivery which cannot be used punctually or in accordance with the contract as a result of the delay.

If the Buyer grants the Supplier in default a reasonable period of grace – allowing for the statutory exceptions – and if the period of grace is not observed, the Buyer shall be entitled to rescind the contract pursuant to the statutory provisions.

Any further claims arising from default in delivery shall be governed exclusively by Section VII.2 of these terms and conditions.

#### **IV. Passing of risk, acceptance**

1. Risk shall pass to the Buyer when the goods have left the works, even if partial deliveries are made or the Supplier has undertaken to bear other costs, e.g. in relation to shipment or carriage and installation. If an acceptance inspection has to be conducted, it shall govern the passing of risk. It shall be performed without delay on the acceptance inspection date, alternatively after Supplier's notification that the goods are ready for the acceptance inspection. The Buyer shall not refuse acceptance in the event of a minor defect.
2. If dispatch or acceptance is delayed and does not take place as a result of circumstances for which the Supplier is not responsible, risk shall pass to the Buyer from the date of notification that the goods are ready for shipment or acceptance. The Supplier undertakes to take out the insurances which the Buyer demands at Buyer's expense.
3. Partial deliveries shall be admissible provided this is reasonable for the Buyer.

## V. Reservation of title

1. The Supplier shall retain title to the goods until all claims of the Supplier against the Buyer arising from the business transaction including claims arising in the future from contracts concluded at the same time or later have been settled. This shall also apply if individual or all claims of the Supplier have been put into a current account and the balance has been drawn and recognised. If the Buyer breaches the contract, including but not limited to default on payment, the Supplier shall be entitled to take back the goods delivered after issuing a reminder and the Buyer shall be obliged to surrender them. The taking-back and seizure of the goods by the Supplier shall not constitute a rescission of the contract unless the Supplier expressly states this in writing. The Buyer shall notify the Supplier without delay of a seizure or any other attachment by third parties.
2. The Buyer shall be entitled to resell the goods delivered in the normal course of business. However, it shall assign here and now all claims to the Supplier which accrue to it from the resale against the customer or third parties, irrespective of whether the goods subject to reservation of title are resold without or after being processed.  

The Buyer shall be authorised, also after the assignment, to collect these claims. The Supplier's authority to collect the claims itself shall remain unaffected thereby but the Supplier undertakes not to collect the claims provided that the Buyer duly discharges its payment obligations. The Supplier may demand that the Buyer notifies it of the assigned claims and their debtors, provides all the details required for collection, surrenders the relevant documents and informs the debtors of the assignment. If the goods delivered are resold together with other goods which do not belong to the Supplier, the Buyer's claim against the customer shall be deemed to be assigned in the amount of the delivery price agreed between the Supplier and the Buyer.
3. Processing or converting of goods subject to reservation of title shall always be performed by the Buyer for the Supplier. If the goods subject to reservation of title are processed with other items not belonging to the Supplier, the Supplier shall acquire co-ownership of the new article in a ratio of the value of the goods subject to reservation of title to the other processed items at the time of processing. In addition, the same shall apply to the article resulting from such processing as to the goods subject to reservation of title.
4. The Supplier undertakes to release securities due to it if their value exceeds the claims to be secured by more than 20 % provided that such claims have not yet been settled.
5. An application to initiate insolvency proceedings shall entitle the Supplier to rescind the contract and demand the immediate return of the goods delivered.

## VI. Warranty

The Supplier shall, to the exclusion of other claims, be liable for material defects and defects in title in the delivery, notwithstanding Section VII, as follows:

### Material defects

1. All parts which prove to be defective as a result of circumstances predating the passing of risk shall be repaired or replaced free of charge at the Supplier's discretion. The discovery of such defects shall be reported to the Supplier in writing without delay. Any parts replaced shall become the property of the Supplier.
2. The Buyer shall, after consultation with the Supplier, grant the latter the necessary time and opportunity to perform all repairs and replacement deliveries which the Supplier may deem necessary; otherwise the Supplier shall be released from the liability for defects resulting therefrom. The Buyer shall only have the right in urgent cases where operational safety

is jeopardised and to prevent a disproportionate amount of damage, of which the Supplier is to be notified without delay, to remedy the defect itself or have it remedied by third parties and to demand compensation from the Supplier for the necessary costs.

3. Of the costs incurred as a result of the repairs or replacement delivery, the Supplier shall – provided that the complaint proves justified – bear the costs of the replacement part including shipment as well as the reasonable costs of dismantling and installation, furthermore, if this can be reasonably demanded depending on the case in question, the costs of any necessary provision of its fitters and helpers.
4. The Buyer shall have the right to rescind the contract under the statutory provisions if the Supplier – allowing for the statutory exceptions – fails to meet a reasonably set period for the repair work or replacement delivery due to a material defect. If the defect is only insubstantial, the Buyer shall merely have the right to reduce the contractual price. The right to reduce the contractual price shall otherwise remain unaffected.
5. No warranty shall be assumed in the following cases in particular:  
Inappropriate or improper use, incorrect assembly or commissioning by the Buyer or third parties, natural wear and tear, incorrect or negligent handling, incorrect maintenance, unsuitable process materials, inadequate construction work, unsuitable foundations, chemical, electrochemical or electrical influences – provided they are not attributable to any fault of the Supplier.
6. The Supplier shall not assume any liability for the consequences resulting from any repair work performed improperly by the Buyer or third parties. The same shall apply to any alterations to the goods delivered undertaken without the Supplier's prior consent.

#### Defect in title

7. If the use of the goods delivered results in an infringement of industrial property rights or copyrights in Germany, the Supplier shall, at its expense, grant the Buyer free of charge the right of further use or modify said goods in a manner acceptable to the Buyer in such a way that the property rights are no longer infringed.  
If this is not possible on economically reasonable conditions or within a reasonable period, the Buyer shall be entitled to rescind the contract. Under the above-mentioned conditions, the Supplier shall also be entitled to rescind the contract.

Furthermore, the Supplier shall indemnify the Buyer for undisputed claims or claims which have become res judicata of the property right holders in question.

8. The Supplier's obligations mentioned in Section VI.7 shall be final, subject to Section VII.2 in the event of an infringement of a property right or copyright.

They shall only exist if

- the Buyer notifies the Supplier without delay of any property right or copyright infringement which has been claimed,
- the Buyer assists the Supplier to a reasonable extent in defending against the claims asserted or permits the Supplier to perform the above-mentioned modifications in accordance with Section VI.7,
- the Supplier reserves the right to take all defensive action including out-of-court settlements,
- the defect in title is not based on an instruction of the Buyer and
- the infringement of a right was not caused by the fact that the Buyer changed the goods delivered arbitrarily or used them in a non-contractual manner.

## VII. Liability

1. If, due to the Supplier's fault, the goods delivered cannot be used by the Buyer in accordance with the contract as a result of the omitted or deficient implementation of proposals and advice given prior to or after the conclusion of the contract or due to the infringement of other contractual ancillary obligations, including but not limited to instructions on the operation and maintenance of the goods delivered, the provisions of Sections VI and VII.2 shall apply mutatis mutandis, to the exclusion of any and all further claims of the Buyer.
2. The Supplier shall only be liable for damage which has not occurred on the goods delivered themselves – regardless of whatever legal grounds – arising from

- wilful intent,
- gross negligence by the owner, bodies or executive staff,
- culpable injury to life, limb, health,
- defects which the Supplier fraudulently concealed or whose absence it guaranteed,
- defects in the goods delivered insofar as liability is assumed in accordance with the German Product Liability Law for personal injury or property damage to privately used goods.

In the case of culpable infringement of essential contractual obligations the Supplier shall also be liable for gross negligence by non-executive staff and for slight negligence, in the latter case limited to compensation for typical damage which can be reasonably foreseen.

Any and all other claims shall be excluded.

### **VIII. Limitation of actions**

Any and all claims of the Buyer – for whatever legal grounds – shall become statute-barred in 12 months. The statutory deadlines shall apply to wilful and fraudulent conduct as well as to claims arising from the German Product Liability Law. They shall also apply to defects in a structure or to goods delivered which were used for a structure in line with their customary use and which caused its defectiveness.

### **IX. Customised work**

1. Orders which are placed on call-off shall contain the call-off times. If the goods are not called off or accepted on time, we shall be entitled either to deliver the quantities which have not been called off or accepted to the Buyer at its expense and risk or put them into storage and charge them as delivered or to refuse to deliver. In all cases we may claim against the Buyer for the total damage we incur as a result of goods not called off or accepted on time.
2. In the case of units which we manufacture on behalf of a Buyer, we shall reserve the right to produce deviations in a quantity of up to 10 % of the volume ordered. Resultant fractions shall be deemed to be 1 unit. Any remaining single parts shall be delivered and charged within these tolerances.

### **X. Use of software**

If software is included in the scope of delivery, a non-exclusive right shall be granted to the Buyer to use the software supplied including its documentation. It shall be handed over for use on the goods intended for this purpose. It shall not be permitted to use the software on more than one system.

The Buyer may only reproduce, edit and translate the software to the legal admissible extent (Sections 69 a ff. of the German Copyright Law) or convert it from the object code into the source code. The Buyer undertakes not to remove any manufacturer's details – including but not limited to references to copyright – or to change such details without the Supplier's prior express consent.

All other rights to the software and the documentation including the copies shall remain with the Supplier or the software supplier. It is not permitted to grant sub-licences.

### **XI. Applicable law, venue**

1. The law of the Federal Republic of Germany governing the legal relationships of domestic parties shall apply exclusively to all legal relationships between the Supplier and the Buyer.
2. The venue shall be the court having jurisdiction at the Supplier's headquarters. However, the Supplier shall be entitled to initiate legal action at the location of the Buyer's head office.

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