

## General Terms and Conditions for the Supply of Machines of ITW Industrie-Technik Werth GmbH, Birstein

### I. Scope

- (1) Sales, deliveries and other tasks of ITW for the Customer are performed exclusively in accordance with the following General Terms and Conditions - hereinafter referred to as the GTC.
- (2) Any terms and conditions of industrial customers that are in conflict with or differ from these GTC shall not be taken into account even if ITW does not expressly disagree with them. Any conflicting or differing terms and conditions shall apply only if ITW expressly agrees with their validity in writing.
- (3) The Customer expressly agrees with the following GTC by issuing a written purchase order.
- (4) The GTC shall also apply to all future transactions with the Customer.

### II. Conclusion of a Contract

- (1) ITW will prepare an individual binding written offer based on the Customer's inquiry. The GTC will be attached to the offer. The offer remains non-binding until its oral or written acceptance by the Customer. Unless stated otherwise, ITW shall be bound by the content of the offer for a maximum period of two months.
- (2) Once accepted by the Customer, the Customer will receive a written confirmation of the purchase order.
- (3) A contract is concluded only upon the written acceptance of the purchase order by ITW under the terms contained in the order confirmation and these GTC.
- (4) Oral agreements and promises require a written confirmation by ITW in order to be effective.

### III. Scope of the Contract

- (1) The subject-matter of the contract includes the products and services specified in the order confirmation.
- (2) Any work related to modifications to be made after the conclusion of the contract upon the Customer's request shall be charged by cost and billed separately.

### IV. Prices - Payment Terms

- (1) The total amount stated in the order shall be the final price, including the statutory value added tax at applicable rate.
- (2) Unless otherwise agreed, purchase prices with contract values of EUR 10,000 or more shall be payable as follows:
  - 40% of the total amount upon receipt of invoice
  - 60% upon delivery / when ready for deliveryOnce due, the invoice amount is payable within 30 days net without reduction.
- (3) If the due dates set out in paragraph 2 are exceeded, ITW shall be, except where the Customer proves lower damage, entitled to charge interest on late payment at a rate of 8 percent above the applicable base interest rate (Section 288 BGB (*Civil Code*)) for the year.
- (4) The right of retention will be maintained and can be exercised by the Customer only if the Customer's counter-claim has been declared undisputed or final.

### V. Delivery Period

- (1) The delivery period specified in the written order confirmation is deemed only an approximate delivery period. Any promised fixed delivery dates shall be binding only if confirmed in writing by ITW.
- (2) The commencement of a delivery period specified by ITW is subject to a prior written order, receipt of the agreed advance payment as well as clarification of all technical and commercial details.
- (3) Compliance with an obligation to deliver is subject to the timely and proper fulfilment of the Customer's obligations, especially the provision of complete documents that are to be provided by the Customer, and any deliveries, if applicable.
- (4) Compliance with the delivery period is subject to own deliveries delivered in the correct and timely manner. ITW shall immediately notify the Customer of any delays.
- (5) Disruptions of deliveries and services due to force majeure and unforeseeable circumstances that were not caused by ITW and significantly impede or prevent delivery, especially strikes, lockouts, operational failures, official measures, delays of deliveries of components, etc., even if they arise from the supplier or a subcontractor of ITW, shall entitle ITW to extend delivery periods by up to 6 weeks despite any binding delivery periods. If the obstacle lasts longer than 6 weeks, the Customer shall be entitled to withdraw from the contract after a reasonable grace period.
- (6) Should ITW be delayed past the delivery date, the Customer shall be entitled to withdraw only after a written notice of refusal in which the Customer sets a reasonable grace period of at least six weeks and after its expiry.
- (7) ITW shall be entitled to deliver any time after the commencement of the agreed delivery period. If the Customer cannot or does not wish to accept the products to be purchased at this time despite an offer from ITW, ITW shall be entitled to reasonably store the products to be purchased at the risk and expense of the Customer and bill the Customer for such products for an immediate payment.
- (8) Aside from any other rights, ITW shall be entitled to withdraw from the contract if the grace period given to the Customer to accept the delivery expires.
- (9) Any increased costs incurred due to such a measure or otherwise as a result of the delay in the acceptance shall be borne by the Customer and can be billed to the Customer separately.
- (10) If the contract is not executed for reasons caused by the Customer, 100% of costs incurred up to that date (associated with the delivery or service) shall be reimbursed. The Customer shall be entitled to prove that ITW incurred no or substantially lower damage due to the non-performance. Damages shall be due for immediate payment. This does not affect the right to claim other damages.
- (11) ITW is entitled to make partial deliveries unless such deliveries exceed an acceptable minimum level.

### VI. Transfer of Risk

- (1) Unless the order confirmation implies otherwise, "ex works" delivery is agreed.
- (2) The risk of accidental destruction or accidental deterioration of the products sold shall pass onto the Customer upon the commencement

- of loading or shipping of the purchased products, even in the event of partial deliveries or if ITW took on other services such as shipping, delivery, assembly and commissioning. If the purchased products need to be picked up, the risk shall transfer at the moment of acceptance.
- (3) The acceptance must be carried out immediately on the date of acceptance, alternatively after notification of ITW of the readiness for acceptance, and the Customer must not reject it because of the mere existence of a minor defect.
- (4) If the shipping or acceptance is delayed for reasons not attributable to ITW, the risk shall pass to the Customer from the date of notification of readiness for shipping or acceptance, as the case may be.
- (5) The delivery will be covered by transport insurance at the Customer's request.

### VII. Complaints and Warranty

- (1) The warranty period is 12 months in single-shift operation from the transfer of the risk to all mechanical parts, unless they are considered parts subject to wear.
- (2) The liability for defects does not apply to defects that can be traced to improper handling, storage, maintenance, cleaning, an error in operation or similarly caused by the Customer or third parties authorised by the Customer, unless they were caused by ITW.
- (3) The Customer shall inspect the purchased products and their packaging immediately upon delivery/pick-up according to the obligations to inspect and complain which are regulated by Section 377 HGB (*Commercial Code*). All visible and all identified defects must be reported in writing immediately upon acceptance of the purchased products within 5 working days after delivery, but in any case before further resale, consumption, processing by bonding or mixing. The Customer shall report all invisible defects in writing immediately upon their detection. In case of a complaint that is not filed in the proper form and/or period, the purchased products shall be considered approved.
- (4) Any damage caused during transport must be immediately reported to ITW.
- (5) Liability for defects shall not apply if the Customer or the person authorised to accept the products mixed the purchased products with other building materials or modified them or had them mixed or modified, unless the Customer proves that the defect was not caused by the mixing or modification, as the case may be.

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(6) In the event of a timely and justified complaint of defects, the Customer may first require additional supplies. If the purchased products are defective, the Customer is entitled, at its discretion, to require additional performance in the form of a repair carried out by ITW or delivery of products free of defects, unless the chosen method of additional performance is associated with unreasonable cost. If defects exist, ITW shall bear all expenses required for the purpose of removing the defect, especially the cost of transport, carriage, work and materials, unless such costs increase due to the purchased products having been transferred to a location other than the place of performance.

(7) If the additional performance fails, the Customer is entitled, at its discretion, to withdraw from the contract or demand a discount.

### VIII. Retention of Title

(1) ITW retains ownership of the purchased products until receipt of all payments from the business relationship with the Customer.

(2) If the Customer's conduct is in breach of contract, especially in case of default in payment, ITW shall be entitled to withdraw from the contract or take back the retained products without giving a grace period. If the products are taken back, there is no withdrawal from the contract, unless ITW has expressly stated that in writing. Any pledging of the retained products also does not imply a withdrawal from the contract. After the products are taken back, ITW shall be entitled to sell the products and the yield from the sale can be offset against the Customer's obligations - minus reasonable costs of the sale. The Customer shall reimburse the amount of the difference between the new value and the reduced value incurred due to use.

(3) The Customer shall handle the retained products carefully; in particular, it shall insure them for the new value against damage caused by fire, water and theft at its own expense. The Customer must perform maintenance and inspection tasks at its own expense.

(4) In the event of pledges or other interventions by third parties, the Customer must immediately notify ITW in writing so that ITW can bring an action pursuant to Section 771 of the ZPO (*Civil Procedure Code*). If no third party is able to reimburse ITW for judicial and extrajudicial costs of the action pursuant to Section 771 ZPO, the Customer shall be liable for any resulting loss incurred by ITW.

(5) The Customer is entitled to sell any retained products in the ordinary course of business; however, already at this time, it is assigning all claims from its Customers or third parties in the amount of the gross invoiced value of the purchase price to ITW, irrespective of whether the purchased products were sold without or after processing. ITW accepts such assignment already at this time. The Customer remains entitled to enforce this claim until further notice even after the assignment. The right of ITW to actually collect this claim shall remain unaffected. However, ITW agrees not to collect the claim as long as the Customer fulfils its payment obligations from the received proceeds, as long as the Customer is not in default in payment and especially as long as no motion to initiate settlement or insolvency proceedings has been filed and as long as payments are not suspended. If that is the case, the Customer shall notify ITW of the

assigned claims and the respective debtors, and release all information and documents necessary to collect the claims, and notify the debtors (third parties) of the assignment. The Customer shall process or transform the retained products for ITW free of charge. If the retained products are processed together with other products that are not property of ITW, ITW shall acquire co-ownership of the new product at a ratio of the value of the retained products (final gross invoice amount) and other processed products at the time of processing.

In other aspects, the product created by processing shall be subject to the same terms as the purchased product delivered with the retention of title.

If the retained products are inseparably mixed together with other products that do not belong to ITW, ITW shall acquire co-ownership of the new product at a ratio of the value of the retained products (final gross invoice amount) and the other mixed products at the time of mixing. If they are mixed in such a way that the Customer's product is to be regarded the main component, it shall be agreed that the Customer transfers proportionate ownership to ITW. The Customer shall take care of such sole ownership or co-ownership for ITW.

(6) The Customer shall also assign claims to ITW to secure claims of ITW against the Customer that arise against a third party due to the joining of the retained products with land.

(7) ITW agrees to release securities benefiting ITW at the Customer's request to such an extent as the realizable value of the securities exceeds the secured claims by more than 10%; the securities to be released shall be selected by ITW.

### IX. General Limitation of Liability

(1) ITW shall be liable in case of intent or gross negligence of ITW or its representatives or helpers, as well as in case of injury to life, body or health, which are caused by slight negligence, in accordance with statutory provisions. In other cases, ITW shall be liable only under the law on product liability or due to culpable violation of material contractual obligations, or if ITW cunningly concealed a defect or assumed a guarantee for the properties of the purchased products. Any claim for damages resulting from culpable violations of material contractual obligations is, however, limited to foreseeable damage typical for the contract, unless there is also a case other than those referred to in sentence 1 or sentence 2.

(2) The provisions of paragraph 1 above shall apply to claims for damages (especially for damages in addition to performance and damages instead of performance), regardless of the legal ground, especially due to defects, due to a breach of obligations or due to prohibited conduct. This also applies to reimbursement of unnecessary expenditure.

(3) Liability of ITW for mediated damage, consequential damage, property damage, damage caused by interruptions of operation, as well as damage caused by third party claims against the Customer is excluded.

(4) Any claims of the Customer for damages against ITW, regardless of their legal grounds, shall be limited to the value of the respective purchased product.

### X. Jurisdiction

(1) If the buyer is an entrepreneur or if other requirements under Section 38 ZPO are met, the competent court is located in the location of the registered office of ITW.

(2) ITW shall be also entitled to sue the Customer in the location according to the Customer's general jurisdiction at ITW's discretion.

### XI. Other Arrangements

(1) ITW reserves the exclusive copyright to images, descriptions, instruction manuals, software programs and other documents.

(2) The design of the products offered complies with EU directives. The documentation is issued in German or English. If the Customer wishes to receive documentation in another language, such documentation will be available for a fee.

(3) The relations between ITW and the Customer are subject exclusively to German law without reference norms of international private law and with the exclusion of the UN commercial law (CISG).

### XII. Severability Clause

The ineffectiveness of individual provisions of the above General Terms and Conditions shall not affect the validity of the remaining provisions and the entire contract.

In case of the ineffectiveness of a provision, such a provision shall enter into force that comes closest to the original provision.

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