

# Delivery and Payment Terms and Conditions

## 1 General

- (1) These Delivery and Payment Terms and Conditions are an integral component of all quotes and contracts for the supply of goods by us, JUNG & CO Gerätebau GmbH as seller, including within current and future business relationships.
- (2) The customer's terms and conditions of business are hereby contradicted. This shall apply even where the seller's delivery is accepted without reservation.
- (3) Agreements and terms and conditions of business to the contrary will only be binding if confirmed in writing by us.

## 2 Quotes, Delivery Dates

- (1) Quotes are non-binding and subject to prior sale.
- (2) Delivery dates will apply subject to correct and timely delivery from our own suppliers, except where the seller promises binding delivery dates in writing.
- (3) Sales prices will only be fixed prices where they are confirmed in writing by the seller.
- (4) Specimens and samples serve to provide approximate visual comparisons only for quality, dimensions and colour.

## 3 Delivery, Delay and Impossibility

- (1) The place of fulfilment for deliveries by the seller will be the loading station. The risk will pass to the purchaser upon delivery. Delivery will be made to the agreed place. In the event of modified instructions, the purchaser will bear the costs.
- (2) Delivery CIF construction site or free warehouse means delivery without unloading providing there is an access road suitable for a lorry and trailer. If the delivery vehicle leaves the drivable access road on the purchaser's instruction, the latter will be liable for any damage that occurs. Unloading must be done immediately and properly by the purchaser. The purchaser will be charged for waiting time.
- (3) Industrial disputes or unforeseeable extraordinary events, such as sovereign measures, traffic disruptions, etc., will release the seller from its obligation to deliver for the duration of the effects thereof, or completely where delivery is rendered impossible.
- (4) Where performance on the part of the seller is delayed, or where performance is rendered impossible on grounds attributable to the seller, all claims for damages and compensation by the purchaser are hereby excluded, except where these relate to wilful acts or gross negligence on the part of the seller or its legal representative or vicarious agents.
- (5) The purchaser will be in default if it fails to make due payments 30 days following receipt of an invoice, or equivalent request for payment, at the latest. The seller reserves the right to give notice of default earlier by issuing a final demand for payment after the due date. Contrary to 1 and 2, the purchaser will therefore be in default if it has been agreed that the purchase price is to be paid by a certain calendar date and it fails to make payment by said date.

## 4 Prices and Payment

- (1) Our prices are ex works or warehouse plus freight and value added tax at the applicable rate.
- (2) In the case of cash sales, the purchase price will be payable immediately, without deductions, upon receipt of the goods.
- (3) Sales on credit are by agreement only. Where credit is granted, all invoices will be payable within 30 days of the invoice date without deductions. Payment of invoices by cheque or bill of exchange will be on account of payment and will require the seller's consent. Discounts, exchange fees and costs will be borne by the purchaser.
- (3) The seller is entitled to charge the purchaser interest equivalent to the credit costs payable by it, but at least 5 percent over the current minimum interest rate (now: base rate) applied by the German Central Bank with effect from the due date where the purchaser is a merchant as defined in the German Commercial Code, or with effect from default where the purchaser is not a merchant.
- (4) If the purchaser is experiencing payment difficulties, particularly in the case of payment default or where a cheque or bill of exchange is protested, the seller will be entitled to make further deliveries subject to advance payment only, demand immediate payment of all outstanding and deferred invoice amounts, and to demand payment in cash or the provision of security and return all bills of exchange accepted on account of payment.
- (5) Invoices from the seller will be deemed accepted if not objected to, in writing, within 30 days following receipt. The seller will notify the purchaser of this upon each invoice.
- (6) The purchaser will refrain from exercising a right of retention based on previous or different transactions within the current business relationship. Counterclaims may only be offset where these are acknowledged by the seller and due for payment or have been legally established.

## 5 Notice of Defects, Warranty

- (1) The obligation set out in Section 377 of the German Commercial Code applies providing the purchaser, who is a merchant as defined in the German Commercial Code, gives notice in writing of all discernible defects, shortages or incorrect deliveries and all obvious defects, shortages and incorrect deliveries in the case of purchasers who are not merchants, within five working days following delivery but prior to processing or installation in all instances. The seller must be informed of any transport damage in writing and without delay. In

the case of delivery by rail, commercial long or short-haul vehicles, or other transport company, the purchaser shall complete the necessary formalities in respect of the carrier. Common breakages or losses will not be grounds for complaint.

(2) In the case of justified complaints, received in a timely manner, about defective goods as defined by Section 459 (1) of the German Civil Code, the purchaser will be entitled to the statutory warranty rights, excluding any claims for compensation.

Any reference to DIN standards generally represents a more detailed description of the goods and shall not constitute any warranty by the seller except where such a warranty has been expressly agreed upon.

(3) Claims for compensation by the purchaser due to positive malperformance, faults during the contractual negotiations and unlawful activity are hereby excluded except where these are based on wilful acts or gross negligence on the part of the seller or its legal representative or vicarious agents.

(4) Any claims for defects will be open to the customer only and may not be transferred.

(5) The limitation period for claims for defects is one year following the transfer of risk except where longer mandatory limitation periods are provided for by law.

## **6 Liability**

(1) We will only be liable for any damage that occurs where this relates to a breach of a material contractual obligation or to wilful or grossly negligent conduct on our part or on the part of our legal representatives or vicarious agents. If a material contractual obligation is breached through simple negligence, our liability will be limited to the foreseeable damage typical of the contract. Obligations that would render it impossible to fulfil the contract if not met, or those relied upon by the customer, and which the latter ought to be able to rely upon, will constitute material contractual obligations.

(2) Any further liability for compensation is hereby excluded. Liability on the grounds of culpable injury to life, limb or health under the statutory provisions will remain unaffected. This also applies to compulsory liability under the German Product Liability Act.

## **7 Retention of Title**

(1) Until such time as the purchase price is paid in full and all outstanding claims under the business relationship are settled, along with any future claims relating to the purchased items, the goods supplied will remain the property of the seller as retained goods. The addition of individual items to an open account or account balancing and acknowledgement of the same will not lift the retention of title. If the seller's liability on a bill of exchange is established in connection with payment of the purchase price by the purchaser, the retention of title will not cease to apply until the bill of exchange has been honoured by the purchaser as drawee. In the case of payment default by the purchaser, the seller will be entitled to take back the retained goods after issuing a warning, and the purchaser will be obliged to surrender the same.

(2) If retained goods are processed by the purchaser into a new, movable item, such processing will be done on the seller's behalf without giving rise to any obligation on the part of the seller. The new item will be the property of the seller. In the event of processing together with goods that do not belong to the seller, the seller will acquire co-ownership of the new item in the ratio of the value of the retained goods to the other goods at the time of said processing. Pursuant to Sections 947 and 948 of the German Civil Code, if retained goods are combined, mixed or blended with goods that do not belong to the seller, the seller will become co-owner in accordance with the statutory provisions. If the purchaser acquires sole ownership as a result of combining, mixing or blending, it hereby agrees to transfer co-ownership to the seller in the ratio of the value of the retained goods to the other goods at the time of the combination, mixing or blending. In such scenarios, the purchaser shall safeguard the items owned or co-owned by the seller, and which are also retained goods as defined in the following provisions, free of charge.

(3) If retained goods are sold on by the purchaser, alone or together with goods not belonging to the seller, the purchaser hereby transfers all receivables arising from the resale to the value of the retained goods, together with any ancillary rights, and with priority over all other debts. The seller hereby accepts this transfer. The value of the retained goods will be the seller's invoice amount plus a security surcharge of 10% which will not be taken into consideration in the event of a third party claim against it. If the retained goods sold on are co-owned by the seller, the transfer of the claim will cover the amount corresponding to the seller's share in the co-ownership. 1(2) will also apply to the extended retention of title. The advance transfer set out in 3(1) and (3) will also cover the amount outstanding.

(4) If the retained goods are installed in a third-party property by the purchaser as a key component, then the purchaser hereby transfers any claims for remuneration against the third party, or any other concerned party, to the value of the retained goods, together with all ancillary rights and including the right to the granting of a claim-securing mortgage, with priority over all other debts. The seller hereby accepts said transfer. 3(2) and (3) will apply accordingly.

(5) If retained goods are installed in the purchaser's property by the purchaser as a key component, then the purchaser hereby transfers any claims arising as a result of the commercial sale of the property, or from property rights, to the value of the retained goods, together with all ancillary rights, and with priority over all other debts. The seller hereby accepts said transfer. 3(2) and (3) will apply accordingly.

(6) The purchaser is only entitled and authorised to resell, use or install the retained goods in the ordinary course of business, and providing any receivables as defined in 3, 4 and 5 above are actually transferred to the seller. The purchaser is not entitled to dispose of the retained goods by any other means, in particular by pledging or assigning as security.

(7) Unless revoked, the seller grants the purchaser the authority to collect the receivables transferred pursuant to 3, 4 and 5 above. The seller will refrain from exercising its own right to collect said receivables providing the

purchaser meets its payment obligations, including in respect of third parties. At the seller's request, the purchaser shall name the debtor for the transferred receivables and will notify the latter of the transfer. The seller is also authorised to notify the debtors about the transfer itself.

(8) The purchaser must inform the seller, without delay, about foreclosure measures initiated by third parties against the retained goods or transferred receivables, providing any documentation necessary to object to such measures.

(9) The right to resell, use or install the retained goods, and the authority to collect the transferred receivables, will lapse in the event of payments being stopped, filing for or the initiation of bankruptcy or settlement proceedings in or out of court. Where a cheque or bill of exchange is protested, the authority to collect will also lapse.

(10) If the value of the securities granted exceeds the receivables by more than 10%, the seller shall retransfer or release the respective amount, at its own discretion. Upon the repayment of all of the seller's receivables under the business relationship, ownership of the retained goods and transferred receivables will pass to the purchaser.

#### **8 Place of Jurisdiction, Applicable Law**

(1) If the requirements for a choice of forum agreement pursuant to Section 38 of the Code of Civil Procedure are met, the place of jurisdiction for all claims of the contracting parties, including for disputes concerning bills of exchange and cheques, will be Kummerfeld, Pinneberg.

(2) The law of the Federal Republic of Germany will apply to the exclusion of the UN Convention on Contracts for the International Sale of Goods.