

GENERAL TERMS OF PAYMENT AND DELIVERY

DELUPA Turbotechnik GmbH

1. Scope

- 1.1. Our Terms of delivery apply exclusively; we do not recognize any contrary terms and conditions of the customer which deviate from our terms of delivery, unless we have given explicit prior consent in writing to their validity. Our terms of delivery apply even if we execute delivery to the customer without reservation in awareness of terms and conditions of the customer that are in conflict with or deviate from our terms of delivery.
- 1.2. Our terms of delivery only apply to companies within the meaning of §310 I the German Civil Code (BGB).
- 1.3. The customer accepts these terms of delivery with the first order.
- 1.4. Our terms of delivery also apply to any order following the first order with the customer.

2. Offer, Construction and Production Documents

- 2.1. We reserve ownership rights and copyrights for illustrations, drawings, 3D-models, calculations and any other documents. These shall not be passed on to any third party unless explicitly agreed to by us in writing.
- 2.2. Models, construction and production documents remain our property.

3. Rules – Standards – Measurements

- 3.1. The customer will provide us with the applicable guidelines and rules at the time of enquiry.
- 3.2. Unless otherwise agreed to in writing, the applicable valid DIN, EN and foundry standards regarding tolerances and measurements will be applied.

4. Pricing – Payment Conditions

- 4.1. Unless otherwise agreed to in writing, all our prices are "net ex works" in EURO (€) excluding insurance and packaging.
- 4.2. Our prices do not include the statutory value added tax applicable at the time. It will be shown separately on the invoice at the time of invoicing.
- 4.3. The customer shall only have set-off rights if the customer's counterclaims have been stated legally binding, undisputed or recognized by our company.
- 4.4. In general the following payment conditions apply:
 - 4.4.1. Usage of tools, tools, devices, samples from other manufacturers and construction work are due and payable, strictly net cash, immediately upon receipt.
 - 4.4.2. Partial deliveries and measurement reports are due within 10 days after the date of the invoice.

5. Delivery time - obligation to accept delivery

- 5.1. The clarification of all technical questions and of all details of execution of the delivery has to take place prior to the delivery time specified in the order confirmation.
- 5.2. The fulfilment of our delivery commitment presupposes that the customer has duly and punctually complied with his obligations. The plea of non-performance of the agreement remains reserved.
- 5.3. Partial deliveries are permissible as far as these do not contradict with the interest of the customer
- 5.4. If the customer delays acceptance or culpably violates any other obligations of collaboration, we shall be entitled to claim damages incurred by us to this extent and also to recover any additional costs. All further claims or rights are reserved.
- 5.5. We are liable in accordance with the statutory provisions, insofar as the underlying purchase agreement is a transaction with a fixed delivery date within the meaning of § 286 Section 2 No. 4 of the German Civil Code (BGB) or § 376 of the German Commercial Code (HGB). We are also liable in accordance with the statutory provisions to the extent that, in consequence of a delay in delivery caused by us, the customer is entitled to enforce the claim that his interest in the further fulfilment of the agreement no longer exists.
- 5.6. In accordance with the statutory provisions, we are furthermore liable to the extent that the delay in delivery is due to a grossly negligent or wilful violation of the agreement from our side. Insofar as the delay in delivery is not founded on an intentional contractual violation on our part, our liability shall be limited to the foreseeable, typically incurred damage.
- 5.7. Should we be prevented from meeting our agreed supply commitments for reasons that were not foreseen at the time of concluding the contract, for example force majeure, unforeseeable delays to deliveries by primary suppliers, than the delivery period is extended by the duration of the hindrance.
- 5.8. We are also liable in accordance with the statutory provisions insofar as the delay in delivery attributable to us is due to the culpable violation of a material contractual obligation; in this case, however, our liability for losses or damage shall be limited to the foreseeable, typically incurred damage.
- 5.9. All other legal claims and rights of the customer are reserved.
- 5.10. If process related issues cause deviating delivery quantities of up to plus/minus 5%, the customer explicitly gives its consent to accept the adjusted delivery quantity.

6. Passing of Risk - Packaging Costs

- 6.1. The most current version of INCOTERMS applies. Unless otherwise stated in the order confirmation, all deliveries will be made "ex works".
- 6.2. Shipping packaging and all other types of packaging according to packaging regulations are nonreturnable. The client is responsible for the disposal of packaging at its own expense.
- 6.3. Transportation insurance can be provided for the delivery at the request and cost of the customer.

7. Procurement Risk - Guarantee – Liability for Defects

- 7.1. We do not assume any procurement risks or any other kind of guarantees unless an written agreement has been concluded with the customer. Insofar

as a guarantee for the procurement of an item has been given from our side, we shall be liable in accordance with the statutory regulations.

- 7.2. Customer claims arising from defects assume that the customer has, in accordance with § 377 of the German Commercial Code (HGB), duly satisfied his duty to examine the delivery item and to make a complaint in respect of a defect immediately.
- 7.3. Insofar as a defect in the delivered item exists, we shall be entitled at our own discretion to supplementary performance in the form of defect removal or delivery of a new item free of defects. In the case of defect removal or replacement delivery, we shall only be obligated to bear costs related up to the price of the delivery item.
- 7.4. If the supplementary performance fails or is impossible due to exceptional reasons, the customer shall, at his discretion, be entitled to demand reduction..
- 7.5. We are liable in accordance with statutory provisions, if the customer asserts claims for damages which are due to wilful intent or gross negligence. Insofar as we cannot be held responsible for an intentional violation of the agreement, our liability for losses or damage shall be limited to the foreseeable, typically incurred damage.
- 7.6. We are liable in accordance with the statutory provisions if we culpably violate a material contractual obligation; in this case, our liability for losses or damage shall also be limited to the foreseeable, typically incurred damage.
- 7.7. Insofar as the customer is entitled to replacement of the loss instead of the performance, our liability, in accordance with para. (4), will also be limited to the foreseeable, typically incurred damage.
- 7.8. Liability resulting from culpable injury to life, limb or health shall remain unaffected; this shall also apply to the mandatory liability arising from product liability laws.
- 7.9. Unless otherwise agreed to in writing, all other liability is expressly and specifically excluded.

8. Total Liability

- 8.1. A further liability for losses or damage other than that provided for under para. 7 is excluded, irrespective of the legal nature of the asserted claim. This particularly applies to claims for damages arising from negligence at the time of concluding the agreement from other breaches of duty or from tortious claims for compensation relating to damage caused to property or material pursuant to § 823 German Civil Code (BGB). The limitation of liability shall also apply insofar as, instead of asserting a claim for damages, the customer demands reimbursement of useless expenditure.
- 8.2. Insofar as our liability for losses or damage is excluded or restricted, this shall also apply with regard to the personal liability for our staff, employees, co-workers.

9. Reservation of Title

- 9.1. We shall retain title to the delivered items until all payments arising from all our claims against the customer based on the existing business relationship between us up to the current date have been settled. In the event the customer has an account with us, our reservation of title also applies to any acknowledged outstanding balance, and the same applies in the event a balance is not acknowledged and a "balance is made for cause", for example, in the event of bankruptcy or insolvency by the customer.
- 9.2. In the event of any conduct on the part of the customer which is in breach of the agreement, especially with respect to delays in payment, we shall be entitled to take back the delivery item. After taking back the delivery item, we shall be entitled to resell it and offset the proceeds derived from the disposal against the liabilities of the customer minus all reasonable costs of realization.
- 9.3. The customer is obligated to handle the delivery item with care; the customer is especially obligated to obtain sufficient insurance at his own expense for damage caused by fire, water and theft to cover their replacement value. Provided that service and inspection work is required, the customer must carry out such work at his own expense and in due time.
- 9.4. The customer must notify us in writing without delay of any garnishments or other interventions by third parties so that we may initiate legal action in accordance with § 771 of the Code of Civil Procedure (ZPO). Insofar as the third party is not in the position to remunerate us for the court fees and extrajudicial costs of a legal action pursuant to § 771 of the Code of Civil Procedure (ZPO), the customer shall be liable for our incurred loss.
- 9.5. The customer is entitled to resell the delivery item in the ordinary course of business; however he hereby assigns to us all claims to the extent of the final invoice amount (including VAT) of our receivables which accrue from the customer reselling the items to his buyers or third parties, irrespective of whether the delivery items are resold without having been further processed or after further processing. The claim of the customer transferred to us in advance shall also be related to the confirmed balance of account as well as to the causal balance in case of bankruptcy of the buyer. The customer shall remain authorized for the collection of this claim even after the transfer to us. Our authority to collect the claims shall remain untouched from this. We do, however, undertake not to collect the receivables as long as the customer meets his payment obligations from the collected revenues, does not delay payment and, in particular, has not filed for the opening of composition or insolvency proceedings or has suspended payment. If this is the case, however, we shall be entitled to require that the customer makes the assigned claims and their debtors known to us, provides us with all the information required for collection, hands over the related documents and informs the debtors (third parties) of the assignment.
- 9.6. The further processing or transformation of the delivery item by the customers shall always be carried out for our benefit. If the delivery item is processed with other objects which do not belong to us, we shall acquire part-ownership of the new article proportional to the value of the delivery item (total invoice amount, including VAT) to the other processed objects at the time of the

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processing. In all other respects, the same shall apply for the article arising from such processing as for items delivered under reservation of title.

- 9.7. If the delivery item is inseparably intermixed with other objects not belonging to us, we shall acquire part-ownership of the new article proportional to the value of the delivery item (total invoice amount, including VAT) to the other mixed objects at the time of the mixing. If, as a result of the mixing, the customer's article is regarded as the main item, it is hereby deemed as agreed that the customer shall assign part-ownership to us on a pro rata basis. The customer shall preserve the resulting sole ownership or part-ownership on our behalf.
- 9.8. On customer's request we undertake to release the securities to which we are entitled to the extent that the realizable value of our securities exceeds the claims that are to be secured by more than 10%. We shall be entitled to choose which securities to release.

10. Confidentiality

- 10.1. The contractual partners shall solely use all documents (e.g. reference samples, drawings, CAD data) as well as any knowledge acquired through the business relationship for the agreed joint purposes and shall treat these with the same care and confidentiality as well as protect them as they would do with their own documents and knowledge against third parties.
- 10.2. This obligation commences with the date of the first receipt of documents and/or knowledge and shall terminate 48 month after the termination of the business relationship.

11. Place of Jurisdiction – Place of Performance

- 11.1. Provided that the customer is a businessman, our place of business shall be the place of jurisdiction. We shall, however, also be entitled to bring an action against the customer in the court of law at his place of business.
- 11.2. The law of the Federal Republic of Germany applies with the exclusion of UN international trade law.
- 11.3. Unless otherwise stated in the order confirmation, the place of performance shall be our place of business.

as of April 2013