

General sales conditions of CMB Schankanlagen GmbH

I. Conclusion of contract

1. These general sales conditions apply for all – including future – contracts, supplies and other services for which we are the seller or contractor, but only in respect of companies in the sense of § 14 of the BGB¹ however. By placing an order our customer declares that he agrees to the supply and payment conditions below. If the order is confirmed by our customer based solely on his own purchasing conditions then we will immediately object to this herewith. Our conditions apply as being accepted upon receipt of our goods or upon approval for dispatch at the latest.
2. Our staff, insofar as this does not include institutions of the company, agents or proxies, are not authorised to make binding declarations on our behalf.
3. Contract conditions agreed in writing also require written form for any amendments. Additional verbal agreements as well as any possible amendments or additions to a contract require our express written confirmation in order to be valid.
4. The customer's orders and commissions only become binding following our written order confirmation. We can effectively issue an order confirmation within four weeks from receipt of the order or commission. The order confirmation can also be done in the form of an invoice or delivery note.

II. Prices and payment conditions

1. Claims by us against the customer resulting from a business relationship with this customer will be assigned to EUROFACTOR AG, Bajuwarenring 3, 82041 Oberschleißheim in Munich. Payments made to discharge debts can therefore only be made to EUROFACTOR AG.
2. We are bound by the confirmed prices for 3 months after the contract has been signed. For deliveries after this time we are entitled to increase the prices according to the changes in costs for wages, administration, exchange rates and materials purchases since the prices were established. Where the price difference represents more than 10 % of the price confirmed the customer is entitled to withdraw from the contract for services which have not yet been provided.
3. The prices are understood as being in Euros plus VAT at the statutory prescribed rate on the date of invoicing, as well as exclusive of any taxes, fees, duties or similar expenses incurred outside Germany through conclusion or execution of the transaction. In the event that we are called upon to pay such expenses then the customer will reimburse this expenditure.
4. Provided that nothing to the contrary results from the order confirmation, our prices apply as being "ex-works" (EXW according to incoterms in the version valid upon contract conclusion,) excluding packaging which will be invoiced separately.
5. The invoice amount is due for payment 30 days from the date of invoice without deductions or discounts. The deduction of discounts requires separate written agreement. The date the credit is received in the EUROFACTOR AG bank account applies as the date of payment.
6. Once arrears occur interest can be charged on the arrears at the statutory rate. We reserve the right to apply additional damages for arrears.

7. Payment by bill of exchange or cheque is always done on account of performance. Acceptance of payment by these methods is not to be viewed as deferral of the purchase price. Our liability for prompt presentation, protest, notification or feedback upon non-payment is excluded.
8. The customer may only offset against undisputed, acknowledged or legally established outstanding payments. He is only authorised to exercise a right of retention of goods insofar as his counter-claim is based on the same contract relationship.
9. The customer is not entitled to transfer claims from this contract to third parties except where this involves payment claims.
10. We are entitled to collect, store, process and use information and data regarding the customer and to forward this to third parties, in particular for the purpose of collecting outstanding payments and outsourced payments due or to outsourced debt management companies for storing, processing and use.

III. Condition and quantities

1. For the time being the service agreed, in particular as regards measurements, weight and other technical details will be defined according to our respectively valid specifications; in the event that none exist this will be done in accordance with the DIN norms valid upon contract conclusion. Where no DIN norms exist the appropriate Euro-norms valid upon contract conclusion will apply and, failing this, customary trade practices.
2. The details on measurements and weights in product catalogues and other printed materials are represented as accurately as possible but are only an approximate representation however; in accordance with the status of technology unavoidable deviations do not constitute a deficiency.
3. In the context of the further development of our products and services we are entitled to make such changes which do not unreasonably compromise the contractually agreed function and the customer interests acknowledged upon contract conclusion; according to the status of technology unavoidable deviations or statutorily prescribed changes do not constitute a deficiency.
4. Our publicity statements, blurb and advertising do not represent any details concerning condition in respect of the contract; therefore differences from the details contained herein do not justify any claim by the customer.
5. Our product descriptions do not represent any condition or durability guarantees in the sense of § 443 of the BGB; we only give such guarantees in writing and only where expressly designated as a "Guarantee".
6. Provided that nothing has been agreed to the contrary we are obliged to provide the service solely in the country of the delivery location, free from industrial property rights and copyright by third parties.

IV. Right of withdrawal upon impossibility

1. We are entitled to withdraw from the contract if, despite having promptly concluded covering transactions we are not supplied ourselves, are not supplied correctly or not supplied on time and if other covering purchases are unacceptable or have failed or if prompt delivery is impossible for our pre-suppliers for reasons which occurred after

contract conclusion or which were not known by us and which are outside our sphere of influence, such as for example, strikes, lock-outs, operational disruptions which are not our fault or with our suppliers too (e. g. tool breakages), delivery blockades, operational closedowns, refusal of import or export licences, other official intervention as well as circumstances above and beyond this, which can be regarded as *force majeure*. Therefore we do not undertake the procurement risk.

2. We are obliged to inform the customer immediately of potential non-availability and to refund counter services undertaken by the customer immediately.

V. Delivery deadlines, transfer of risk and disposal of packaging

1. Where no firm deal has been agreed but a delivery date is stated in our bid or our order confirmation, this may be exceeded by 2 weeks. Before exercising the right to compensation on account of non-fulfilment an appropriate deadline extension must be set.

The delivery deadline can be extended by any period for which a delivery obstruction exists for the reasons mentioned in Figure IV.1. If such an obstruction exists for longer than 3 months we are entitled to withdraw from the contract without this giving rise to any obligation to pay compensation. The customer remains at liberty to exercise any rights he may be entitled to.

2. Risk transfers to the customer upon dispatch of the goods at the latest and in fact even if part deliveries are made or if we have undertaken other services e. g. the shipping costs or carriage. On written request from the customer the dispatch can be insured against theft, breakage, transport, fire and water damage and other insurable risks at his cost.
3. If dispatch is delayed as a result of circumstances which are the customer's fault then the risk and storage costs transfer to the customer from the date of readiness for dispatch; however at the customer's wishes and costs we are obliged to take out any insurance that he may request. If the supply is delayed by more than 4 weeks for reasons which are the customer's fault we are entitled to withdraw from the contract and to enforce statutory claims.
4. For orders and commissions awarded for call-off the customer must, if nothing has been expressly agreed to the contrary, accept these within two months from our written order confirmation at the latest.
5. Part deliveries are permitted.
6. The customer is obliged to dispose of the packaging materials at his own responsibility and cost.

VI. Extent of liability and procedure for breaches of obligations and guarantees

1. Provided that nothing is specified to the contrary in Figures VI.2 to VI.10 below claims by the customer on account of materials defects, deficiency of title or on account of breach of an obligation under the contractual relationship – equally for whatever legal reason – are excluded.
2. The above-mentioned liability exclusion (Figure VI.1) does not apply in the context of liability
 - (1) in accordance with the product liability law,

- (2) on account of injury to life, body or health, based on negligent or intentional breach of obligation by us or by one of our legal representatives or one of our fulfilment agents,
 - (3) on account of damage relating to intent or gross negligence by us, one of our legal representatives or one of our fulfilment agents,
 - (4) on account of rights which the customer enforces on account of deficiency or from a guarantee of condition or durability (§ 443 of the BGB),
 - (5) on account of recourse actions in the sale of consumer goods supply chain (§§ 478, 479 of the BGB),
 - (6) on account of slightly negligent breach of an essential contract obligation in respect of foreseeable average direct damages typical of contracts for our kind of service.
3. The customer must examine the goods immediately after receipt and if a deficiency is apparent must immediately inform us in writing. Otherwise the goods apply as being approved insofar as a deficiency which is recognisable with normal examination is concerned. The same applies if the customer does not proceed with an agreed acceptance or does not do so on time or does not do so fully. If a deficiency appears subsequently then this must be notified immediately upon discovery.
 4. All claims made against us on account of materials defects or deficiency of title expire 12 months after the start of the statutory guarantee period. Compulsory longer guarantee periods in accordance with the product liability law, § 438 Par. 1 No. 2 of the BGB (buildings and materials for buildings), § 479 Par. 1 of the BGB (recourse actions in the sale of consumer goods supply chain) or § 634a Par. 1 No. 2 of the BGB (construction deficiencies) remain unaffected. For potential replacement deliveries or subsequent improvements a guarantee will be granted for the same period as for the original service, thus being until the end of the guarantee period for the initial delivery.
 5. We will initially provide the guarantee service for deficiencies in goods supplied by us by rectifying the deficiency or with a replacement delivery at our choice.
 6. In the event of rectification of a deficiency or a replacement delivery (subsequent fulfilment) Figure V. Nos. 1 and 2. apply accordingly.
 7. If we have performed a partial service then the customer can only withdraw from the whole contract if he no longer has any interest in the partial service. With multiple delivery contracts the customer's rights are restricted to the respective partial delivery.
 8. In cases where there is only minor contravention of the contract, in particular with only slight deficiencies, the right of the customer to withdraw from the contract if subsequent fulfilment has failed is excluded.
 9. If the customer chooses to withdraw from the contract after unsuccessful subsequent fulfilment then he is not entitled to compensation on account of the deficiency. If after unsuccessful subsequent fulfilment the customer chooses compensation then compensation is limited to the difference between the purchase price and the value of the deficient materials. The customer retains the goods if this is acceptable to him. The above-mentioned regulations do not apply in the event of a guarantee given by us (§ 443 of the BGB) or in the event of fraudulent concealment of a deficiency.
 10. We can refuse to rectify a deficiency provided that the customer has not paid for the part of the delivery not objected to, and in particular where in doing so the customer has

not given us the opportunity to prove the deficiency ourselves when requested by making the goods or samples of them which are objected to immediately available.

VII. Retention of title, collateral agreements

1. We reserve ownership of the item of purchase up until settlement of all payments due under the business relationship with our customer.
2. With culpable behaviour by the customer which contravenes the contract, in particular with payment default, we are entitled to take back items of purchase covered under our retention of title to such an extent as is necessary to realise our outstanding payments due. Potential seizure of goods is always done only as a precaution; no withdrawal from the contract is implied by this, even if subsequent part payments were allowed. We are authorised to use items of purchase after they have been taken back. The proceeds from use are to be offset against the customer's liabilities – less appropriate costs for use – we will return any potential extra proceeds immediately to the customer.
3. Subject to Figure VII.4 in the context of normal business operation the customer is entitled to resell the goods under retention of title. Reselling is not allowed in the context of an open account relationship, nor may the outstanding payments from the resale be excluded from cession with the contractor. If the sales price with the contractors is deferred, the customer must retain title under the same conditions as mentioned above. With this the customer cedes the outstanding payment from resale of the goods under retention of title to us, and also does the same if the goods are processed. If the processed product, together with goods under our retention of title, only contains those items which either belonged to the customer or were only supplied under the so-called retention of title, then the customer cedes the whole outstanding purchase price to us. In other cases, i.e. with concurrence of pre-cession to several suppliers we are entitled to a fraction of the outstanding payment corresponding to the ratio of the invoice value of our goods under retention of title to the other processed items.
4. Cession is provisionally done tacitly, however we have the right to collect outstanding payments ourselves as soon as the customer is not complying properly with his payment obligations. The customer must inform the contractor of the cession at our request and give us all the necessary and useful information for enforcing the outstanding payments ceded.
5. If the value of the securities due to us exceeds the outstanding payments to be secured by more than 20%, then on request from the customer we are obliged to release some securities. The choice of the securities to be released is left to us.
6. The customer does not acquire any ownership of the wholly or partly produced items by processing the items of purchase; processing is done free of charge exclusively for us. However should retention of title expire through any circumstances whatsoever, then the customer is already in agreement with us that the ownership of the items of purchase transfers to us upon processing. We accept this transfer. The customer remains the unpaid custodian.
7. With the processing of goods still under third party ownership we acquire co-ownership of the new items. The scope of this co-ownership is derived from the ratio of the invoice value of the goods supplied by the customer to the invoice value of the remaining goods.

8. The customer will issue information to us on the whereabouts of the retained goods and on the outstanding payments arising from reselling, on request and at any time. In the event of pledging and seizure of the goods and/or the outstanding payment ceded through third parties, immediate notification must be given to us in writing by sending a copy of the seizure protocol.
9. Where supplies are made in a country whose law does not accept an expanded, extended and/or open account retention of title, simple retention of title to the item of purchase will apply up until full payment of the purchase price instead.
10. All existing rights in our favour from the collateral agreements made, in particular security and retention of title in all forms, will be transferred to EUROFACTOR AG.

VIII. Final provisions

1. This contract is subject exclusively to German material law with the exclusion of the UN Convention on Contracts for the International Sale of Goods. The place of fulfilment for the obligations of this contract is Krefeld.
2. The courts in either Krefeld or alternatively Oberhaching in Munich are responsible locally and internationally for all disputes resulting from this contract
 - a) if the other party is a businessperson, a corporate body in public law or an assets fund under public law,
 - b) if the other party has their general place of jurisdiction (domicile, registered office or usual residence) within Germany or
 - c) relocates their domicile or usual residence to an area in Germany after contract conclusion or if their domicile or usual residence is not known at the time of the institution of proceedings.
3. The statutory regulations of jurisdiction apply for default actions.
4. Should any provision of these conditions and the additional agreements concerned be or become invalid, then the validity of the rest of the contract will not be affected. The contract partners are obliged to replace the invalid provision with a regulation which comes closest to ensuring commercial success.

01. [July] 2006

CMB Schankanlagen GmbH Krefeld/Germany

Notes:

BGB¹ - Bürgerliches Gesetzbuch = German Civil Code