

General Terms and Conditions of Convothem Elektrogeräte GmbH

Sec. 1 Scope

(1) For all orders placed with us by the purchaser ("Customer") only our general terms and conditions of sale ("Terms and Conditions of Sale") shall apply.

They shall also apply to future business with the Customer.

(2) We do not accept any opposing terms and conditions of sale or terms and conditions of the Customer that deviate from our Terms and Conditions of Sale unless we have expressly agreed to their validity in writing. Our Terms and Conditions of Sale shall also apply if we perform the delivery to the Customer without reservation in the knowledge of opposing conditions or of conditions of the Customer which deviate from our Terms and Conditions of Sale.

(3) All agreements which have been made between us and the Customer for the purpose of the performance of this contract are laid down in writing in this contract.

(4) All statements and notifications of legal relevance required to be made by the Customer vis-à-vis us after conclusion of the contract (e.g. setting deadlines, notification of defects, declarations of withdrawal or reductions) must be made in writing to be effective.

(5) These Terms and Conditions of Sale shall only apply if the Customer is an entrepreneur within the meaning of Sec. 14 of the German Civil Code (*Bürgerliches Gesetzbuch, BGB*), a legal entity under public law or a special fund under public law within the meaning of Sec. 310 para. 1 BGB and shall not apply if the Customer is a consumer within the meaning of Sec. 13 BGB.

Sec. 2 Offer and Order

(1) Our offers are subject to change, unless the order confirmation states something different.

(2) Individual agreements made with the Customer in the individual case shall always take precedence over these Terms and Conditions of Sale. A written contract and/or our written confirmation shall be decisive for the contents of such agreements.

(3) We reserve the right to make technical alterations.

Sec. 3 Documents, Software

(1) Drawings, illustrations, dimensions, weights or other performance data handed over shall only become binding if this has been expressly agreed in writing. Catalogues, brochures etc. only contain approximate data and can only be the basis for complaints of the Customer if they form part of a contract or an agreement as to the quality of the goods between the parties.

(2) Right of ownership and copyright in all documents

entrusted to the Customer, such as e.g. calculations, drawings, drafts, samples and other documents (together "Documents") as well as any and all rights in computer programs, software, databases and other data (together "Software") remain with us and must not be reproduced, processed, disclosed or made publicly available without our prior written consent. Documents must be returned to us immediately at our request.

(3) Software which is offered for download on our platform and/or a platform of a company of the Manitowoc Group, the respective license terms shall apply which the Customer can read and has to accept before starting the download.

(4) There might be transmission problems when downloading the Software which might jeopardise the completion of the installation and the proper running of the Software. The Customer shall monitor the proper installation of the Software before using it, insofar as this is possible for him. The use of the Software does not release the Customer from any reviewing and monitoring duties with respect to the initial operation of the goods.

(5) The respective terms and conditions of license and use of a third-party provider shall be applicable with respect to any third-party software.

Sec. 4 Delivery and Transfer of Risk

(1) Insofar as nothing to the contrary has been agreed in writing, our deliveries are made in accordance with Incoterms 2010 and at our option ex works or warehouse, in this connection this can also be the works or warehouse of a third party.

(2) The delivery date will be individually agreed. A delivery date shall be binding if it is confirmed by us as such in writing. A prerequisite for a binding delivery date is the proper production of all documents to be supplied by the Customer, approvals, releases as well as the clarification of technical questions, such as for example power requirements, dimensions, etc. Should it emerge that this is not the case or should subsequently a modified performance of the contract be agreed, we cannot be held responsible for any delays resulting therefrom and the delivery date is to be adjusted accordingly.

(3) A binding delivery date is considered as met if the goods are sent to the indicated delivery address on this date. Adherence to the delivery date presupposes the punctual fulfilment of the obligations of the Customer, including the punctual payment of any deposits or advance payments agreed.

(4) Should we be unable to meet binding delivery deadlines for

reasons beyond our control (non-availability of performance), we will inform the Customer accordingly without undue delay indicating the expected new delivery deadline. Should the performance also remain unavailable within the new delivery deadline, we are entitled to withdraw from the contract in whole or in part; we will refund any consideration already rendered by the Customer without undue delay. Non-availability of the performance in this sense shall be deemed, in particular, a delayed delivery by one of our suppliers, if we have concluded a congruent covering transaction, neither we nor our supplier are responsible for the delay or if we are not obliged to procure the goods in the individual case.

(5) The commencement of our default in delivery shall be subject to the statutory provisions. In any case, however, a reminder by the Customer shall be required. In the event of a default in delivery we are responsible for, the Customer can only withdraw from the contract after an appropriate grace period of at least two weeks with an express penalty of denial of service. Claims for damages are only applicable according to Sec. 7 of these Terms and Conditions of Sale.

(6) Partial deliveries and partial performances by us are permitted and shall be invoiced as they are made.

(7) Moving goods into place, installation and initial operation at the Customer site are not covered by us and shall only be part of the delivery scope in the event of express special agreement in writing.

(8) In the event of a default in accepting the delivery of goods or an untimely call off by the Customer, regardless of our claim of performance and other rights, we are entitled to demand to be compensated for the damage incurred by us, including any additional expenses such as storage etc. If the aforementioned circumstances exist, the risk for the goods shall pass to the Customer.

(9) The risk of loss or of accidental deterioration of the goods shall in any event pass to the Customer at the latest when the goods are handed over to the person transporting them. This applies irrespective of who bears the costs of carriage. The risk also passes to the Customer if the goods are stored at the request of the Customer.

(10) If the loading and transportation of the goods are delayed for a reason for which the Customer is responsible, we are entitled to store the goods at our equitable discretion, at the expense and the risk of the Customer, to take all measures deemed suitable for the preservation of the goods

and to invoice the goods as delivered.

Sec. 5 Prices and Payment

(1) Our prices are in EURO and, unless otherwise expressly agreed, are delivery ex works. The statutory value added tax is not included in the prices and, for German Customers, will be itemised in the invoice at the statutory level on the day on which the invoice is raised. The price that shall be used for the calculation of prices is the price that is valid on the day of the delivery or performance of service.

(2) In the case of orders which take over four months to execute, we reserve the right to alter the prices accordingly if, after conclusion of the contract, cost reductions or cost increases occur, especially as a result of collective agreements being agreed or changes in the prices of materials. We will provide proof of these to the Customer on request.

(3) Changes to the order at the request of the Customer which we receive after our order conformation shall be charged separately.

(4) Insofar as nothing to the contrary is agreed, the purchase price for goods and services is to be paid in advance or by cash on delivery. For non-domestic Customers cash in advance can be changed to a bank-confirmed letter of credit with our acceptance. The Customer shall bear all cost for the letter of credit.

(5) Also in case of individually agreed terms of payment, we reserve the right to ask for advance payment of the agreed purchase price. Particularly in the case where it becomes discernible before the conclusion of the contract that the claim on the payment of the purchase price is jeopardised by the Customer's inability to pay. Such a threat to the claim on payment of the purchase price exists if the trade credit insurance does not encompass the limit of liability which is required for the order. This also applies if we first learn about the lack of ability to pay after the conclusion of the contract. If the requirement for advance payment is not fulfilled by the Customer, we can withdraw from the contract without establishing any liability for compensation.

(6) All payments are to be made only to us or to the bank account stated on our invoice, any postage paid and free of costs. We only accept money orders, cheques and, in particular, bills of exchange after prior agreement as on account of payment and not as performance of payment. Costs for collection, exchange charges and discount charges are charged to the Customer.

(7) The Customer shall only have offsetting or retention rights insofar as his claim has been established with final legal effect or is uncontested. The exercise of the

right of retention shall also be excluded insofar as counterclaims of the Customer are not based on the same contractual relationship. In case of defective deliveries, the Customer's counterclaims, in particular pursuant to Sec. 7 (8) sent. 2 of these Terms and Conditions of Sale shall remain unaffected.

(8) In the event of late payment or non-fulfilment, we charge interest on arrears of 9 percentage points above the basic rate of interest p. a. We reserve the right to assert higher damages if higher damage actually occurs.

Sec. 6 Reservation of Property Rights

(1) We reserve the property in the delivered goods until full payment of all claims arising within the scope of the business relationship.

(2) The Customer is entitled to resell the retained goods to third parties in the ordinary course of business. The Customer shall hereby assign the claims resulting from the resale of the retained goods to us in the amount of the invoice amount including value added tax agreed with us. This assignment shall apply irrespective of whether the goods are resold without being processed or after being processed. The Customer remains entitled to collect the claim even after the assignment.

Our authority to collect the claim ourselves remains unaffected by this. We will not, however, collect the claim as long as the Customer fulfils his payment obligations from the proceeds received, is not in arrears with payments and, in particular, no petition has been filed to open insolvency proceedings and there is no suspension of payments.

(3) The processing and modification of the goods by the Customer shall always take place in our name and on our behalf, without any obligation for us resulting from this. Insofar as the goods are processed with other articles which do not belong to us, we shall acquire co-ownership in the new item on a pro-rata basis (agreed purchase price).

(4) The Customer is obliged to treat the retained goods with care and to insure them adequately at his own expense against theft, damage, destruction and accidental loss (in particular fire and water) at their new value and to provide evidence of this on request.

He hereby assigns his claims arising from such insurance policies to us.

(5) The Customer may not pledge retained goods nor assign them as a security. In the case of an approach by a third party, the Customer has to inform us immediately in writing.

(6) Insofar as the reservation of property rights or the assignment of claims should be null and void or unenforceable because of foreign statutory regulations, the securities arising from the reservation of

property or the assignment of claims in this area shall be deemed agreed. If the cooperation of the Customer is required for this, he shall take all measures which are required to substantiate and preserve the security.

(7) Insofar as the overall value of our rights to the provision of securities exceeds the amount of all secured claims by 20%, we will release a corresponding proportion of the rights to the provision of securities.

Sec. 7 Notice of Defect, Warranty and Damages

(1) The Customer's rights in the event of material or legal defects (including wrong or short deliveries as well as incorrect assembly or defective assembly instructions) shall be subject to the statutory provisions, unless otherwise agreed hereinafter. The special statutory provisions regarding the final delivery of the goods to a consumer (recourse against the supplier pursuant to Secs. 478, 479 BGB) shall remain unaffected in any case.

(2) The Customer's warranty rights shall be excluded if he does not duly comply with his duties to examine and to report defects pursuant to Sec. 377 of the German Commercial Code (*Handelsgesetzbuch, HGB*). If a defect becomes apparent during inspection or afterwards, we must be notified accordingly in writing without undue delay. The notification shall be deemed made without undue delay if it is made within two weeks; the timely dispatch of the notification shall be sufficient to observe the notification period. Irrespective of this duty to examine and to report defects, the Customer must report any obvious defects (including wrong and short deliveries) in writing within two weeks from delivery; again, the timely dispatch of the notification shall be sufficient to observe the notification period. If the Customer fails to duly inspect the delivery and/or to duly report defects, our liability for defects which were not reported shall be excluded.

(3) Our liability for defects shall primarily be based on the agreement made regarding the quality of the goods. If no agreement has been concluded regarding the quality, whether a defect exists or not shall be determined pursuant to the statutory provisions (Sec. 434 para. 1 sent. 2 and 3 BGB).

(4) Errors made by the Customer with regard to the correctness and completeness of the documents which have been supplied to us for the execution of the order, if any, or of the dimensions and other details supplied cannot substantiate a defectiveness in our service.

(5) There are no claims for defects in the event of natural wear and tear and in the event of damage which occurs after the transfer of risk as a result of incorrect handling or excess load beyond the

applicable specifications and non-compliance with the instructions manual as well as in the event of damage resulting from non-recommended or other unsuitable equipment, in particular, cleaner, defective building work by the Customer or third parties, an unsuitable building site or by other environmental influences beyond our responsibility as well as in the event of non-reproducible software errors. If improper repairs or alterations are carried out by the Customer or third parties, there shall be no claims for defects for these and for any consequences arising out of them against us.

(6) Claims for defects in the case of second-hand goods shall be excluded, unless we fraudulently concealed a defect or guaranteed the quality of the goods. Claims for defects in the case of new goods shall become time-barred after twelve months after delivery of the goods to the place of destination by us. Apart from that, Sec. 7 (9) shall remain unaffected. Before any goods are returned, our agreement is to be obtained. If we grant any guarantees in addition to the statutory warranty rights, the respectively applicable guarantee provisions shall apply.

(7) Should, despite the exercise of all due care, the delivered goods show a defect which occurred before the transfer of risk, we will, at our option, either correct the goods or deliver a replacement provided that a notice of defect is made in due time.

It is incumbent upon the Customer to provide evidence of the defect. If we fail to provide subsequent performance, the Customer can – irrespective of any claims for damages – withdraw from the contract or reduce the payment accordingly.

(8) We are entitled to make the owed subsequent performance subject to payment of the due purchase price by the Customer. The Customer is, however, entitled to retain part of the purchase price in an amount reasonably proportionate to the defect.

(9) We can be held liable for damages - irrespective of their legal grounds - in cases of intent and gross negligence. In cases of slight negligence, we shall only be liable

a) for damage resulting from injuries to life, body or health,
b) for damage resulting from a violation of an essential contractual obligation (an obligation which must be fulfilled to enable a due performance of the contract and on whose fulfilment the contractual partner generally relies and may rely); however, in this case our liability shall be limited to compensation for the foreseeable, typically occurring damage. The limitations of liability pursuant to this clause shall not apply where we fraudulently concealed a defect or guaranteed the quality of the goods. The same shall apply to claims of

the Customer pursuant to the German Product Liability Act (*Produkthaftungsgesetz, ProdHaftG*). In the absence of an alternative agreement to the aforementioned, liability is excluded.

Sec. 8 Miscellaneous

(1) This contract and all legal relations between the parties are subject to the law of the Federal Republic of Germany without reference to the UN Convention on Contracts for the International Sale of Goods (CISG).

(2) Place of performance and exclusive place of jurisdiction for all legal disputes arising from our business relationships shall be Eglfing, Germany, unless otherwise agreed in writing.

(3) Should individual clauses in this contract be or become invalid or contain a gap, this shall not affect the validity of the remaining clauses.

(4) The Customer assumes the obligation to dispose of the goods after the end of use at the Customer's own expense in accordance with the statutory provisions. The Customer has to contractually bind commercial third parties to whom he passes on the delivered goods to dispose of them correctly at their own cost in accordance with the statutory regulations in force at that time when they finish using them and, in the event that they are passed on again, to impose a corresponding obligation to the new owner. If the Customer omits to contractually bind third parties to whom he passes on the delivered goods to assume the obligation of disposal and the obligation to pass on the obligation, the Customer is obliged to take the delivered goods back at his own cost when use of them has ended and to dispose of them correctly in accordance with the statutory regulations.

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