

# General Terms and Conditions of Sale and Delivery of S+S Regeltechnik GmbH

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## 1. Scope

- (1) Any and all quotations, performances and agreements are solely made on the basis of these S+S Regeltechnik GmbH (S+S) General Terms and Conditions of Sale and Delivery in their respective effective version. These General Terms and Conditions of Sale and Delivery are effective towards entrepreneurs in terms of BGB (German Civil Code) only.
- (2) Customers' terms and conditions conflicting with or deviating from these General Terms and Conditions of Sale and Delivery will be acknowledged by S+S only, if S+S has expressly consented to the validity of such terms in writing. These S+S General Terms and Conditions of Sale and Delivery shall also be effective when services have been provided in knowledge of conflicting or deviating customers' terms and conditions to such customer without reservation.
- (3) These S+S General Terms and Conditions of Sale and Delivery are being acknowledged through the customer's order placement or acceptance of services provided for the term of the entire business connection, also if they are not expressly repeated.

## 2. Quotation/contract conclusion/termination of contract

- (1) All quotations made by S+S are without engagement. A contract is concluded through the written order confirmation or the delivery of goods ordered as far as S+S does not indicate via other circumstances that the order has been accepted.  
As far as the customer communicates change requests after receipt of the order confirmation, S+S is entitled to charge the additional costs resulting thereof in case of accepting such changes.
- (2) Illustrations, drawings and other specifications are only committal upon written acknowledgement. The corresponding applies for advisory or informative conversations between S+S and the customer, in particular about the applicability of goods ordered.
- (3) As far as the customer cancels the contract regardless for whatever reason without S+S being accountable for, S+S is entitled to the right to claim blanket damages in the amount of 10 % of the total price being agreed at the date of order cancellation unless S+S or the customer provides other evidences in the individual case.

## 3. Performances / dates

- (1) Delivery terms are binding only (fixed date transaction), if S+S has expressly confirmed that in writing.
- (2) The adherence to binding terms of delivery presupposes the clarification of all technical and other questions as well as the timely and proper performance of any of the customer's duties.
- (3) Delays in delivery for reasons beyond the sphere of influence of S+S, particularly because of unforeseeable occurrences preventing or impeding a delivery in due time, S+S cannot be held responsible for. In such cases the delivery term extends accordingly. In the case of delay of performance the customer is entitled to withdraw from the non-performed part of the contract as far as such impediment to performance continues for more than 6 weeks and a reasonable grace period for delivery has been granted. Customer's claims for damages because of extension of a delivery period or in case of S+S being exempted from its duty to perform are excluded as far as the customer had been forthwith notified of such impediment to performance.
- (4) As far as S+S is responsible for the non-compliance with binding delivery dates, S+S's liability is limited to 0.5 % of the order value for each full week of default, however up to a maximum of 5 % of the order value of the shipment concerned. Any further claims for damages the customer can only assert as far as the customer has granted S+S a reasonable grace period in writing and such delay in delivery is attributable to gross negligence or intent on part of S+S.
- (5) S+S is exempt from its duty to supply when circumstances become known during the term of the contractual relationship that give reason to rightful doubts in the solvency of the customer. In that case S+S will perform the delivery as far as the customer makes an advance payment in respect of the purchase price, or provides appropriate securities.
- (6) As far as a customer orders goods on call (in particular pre-order), the full acceptance of the purchase or the full release order respectively has to be made within 12 months from the date of contract conclusion or order respectively. Otherwise the customer is obligated to accept the goods within 10 working days as far as S+S requests to do so in writing.
- (7) In case of noncompliance with the time limit mentioned under cipher (6), the legal consequences of default of acceptance in terms of BGB will commence.
- (8) Generally no right to return goods not needed anymore by buyer or for the purpose of stock reduction does exist.

## 4. Delivery

- (1) Shipment of goods is effected ex principal office of S+S at the customer's risk and expense (Incoterms 2010: EXW). Any transport, breakage, theft, or other insurance will be taken out by S+S only at customer's request. Any expenses resulting thereof will be charged to the customer's account.
- (2) As far as a shipment is supposed to be carried out at a later date than the practically possible date of shipment upon the customer's request, S+S is entitled to charge the costs of storage to the customer's account, starting from one month after readiness for shipment at a blanket rate of 0.5 % of the order value for each month, subject to providing other evidences. One month after notification of readiness for shipment S+S is alternatively entitled to request the customer to accept the goods and in case of non-acceptance, to dispose of the goods in any other way. Then the customer is to be supplied within a reasonably extended period of time.
- (3) Partial performances are permissible as far as that is not unreasonable to the customer.

## 5. Prices / terms of payment

- (1) Prices by S+S are understood plus legal value added tax at the respective rate in effect, ex principal office of S+S plus transport / shipping and packing costs to be separately charged. For orders of less than 75.00 EUR in value we reserve the right to charge a small quantity surcharge in the amount of 8.50 EUR. For special custom-made items we charge 67.00 EUR setup costs.  
Existing customers from which the last payment was received more than 12 months ago as well as new customers are supplied two times against prepayment and then after a positive creditworthiness check by our Euler Hermes trade credit default insurance on basis of payment on account. Foreign customers are supplied against prepayment.
- (2) S+S is entitled to invoice partial billing in accordance with the progress of order processing.
- (3) The invoice amount is due for payment upon receipt of the invoice. As far as payment is not effected within 14 working days from the date of performance in form of goods and receipt of the invoice, the customer is in default. All payments must be made in EUR. With the reservation of providing evidence of further damages in case of default of payment the customer has to pay interest on arrears at a rate of 8 percentage points above the respective base rate.
- (4) Bills of exchange and checks are only accepted for processing and take fulfilling effect only after being unconditionally credited. Eventual ancillary costs arising due to payment by bill of exchange or check are for the customer's account.

## 6. Warranty

- (1) The customer is obligated to inspect the goods immediately after the delivery by S+S as far as that is feasible according to the proper course of business and to forthwith notify S+S of any defects. In case the customer fails to provide such notification, the goods are deemed approved unless a defect is concerned that was not recognizable in the course of inspection. If such a defect appears at a later date, notification must be made immediately after discovery; otherwise the goods are deemed approved also in view of such defect. To maintain the customer's rights the timely dispatch of the notification is sufficient. If S+S has maliciously concealed a defect, then S+S cannot refer to that clause.

- (2) If the suitability or functionality of the goods can only be checked and ascertained in the course of further processing, the customer is obliged to carry out a test processing run. If no notification of defects is made after this test run, the goods shall also be deemed approved.
- (3) Within the scope of supplementary performance S+S has a right of choice. When the first-time attempt to eliminate the defect remains unsuccessful, S+S reserves the right to deliver goods free of defects. In case the supplementary performance has failed, the customer is optionally entitled to the right of withdrawal, or to the right of curtailment.
- (4) Excluded from any warranty are: faults caused by inapplicable or improper application and utilization, faulty mounting & installation or putting into operation, particularly in the case of non-observance of operating instructions, or because of incorrect or negligent treatment by the customer or any third-party person not being within the sphere of responsibility of S+S.
- (5) S+S assigns its warranty claims existing against the manufacturer to the customer. The customer accepts such assignment. The customer is only entitled to assertion of warranty claims against S+S as far as the seriously pursued extra-judicial assertion of claims against the manufacturer has remained unsuccessful. In that case the customer is obligated to assign those claims against the manufacturer back to S+S again.
- (6) Warranty claims prescribe within one year from the date of delivery of goods through S+S.
- (7) If the customer calls upon S+S because of warranty claims and it turns out that either no defect was existing, or the asserted defect is due to a circumstance that does not commit S+S to warranty, then the customer has to reimburse S+S for the expenses resulting thereof as far as the customer has caused such availment of S+S grossly negligent or with intent.
- (8) Eventual supplementary performances or subsequent improvements made by S+S always happen without acknowledgement of any statutory duty and on goodwill basis.
- (9) In case the customer withdraws from the sales contract or rightfully requests delivery of new goods free of defects, or compensation for damages instead of the full performance, then S+S is obligated to dismount such defective goods delivered at its own expense as far as the customer had already installed such goods and to remove them. The customer itself is allowed to dismount defective goods upon request. In that case S+S refunds the customer for the costs arising in the course of doing so, however only as far as such are the customer's primary costs not including any share of profit. As far as the customer commissions a third party contractor with demounting, expenses resulting thereof will only be reimbursed by S+S if the buyer had granted S+S reasonable respite before without success. This does not apply when additional respite is legally superfluous according to statutory regulation.
- (10) In the event of justified complaints, the corresponding returned goods will only be accepted if an RMA number has been issued for them. This must be requested from S+S and should always be quoted on the documents accompanying the returned goods.

## 7. Liability

- (1) S+S is liable for damages due to wilfully and gross negligently caused violation of duties. S+S is furthermore liable for damages resulting from slightly negligently caused violation of material contractual obligations. Material contractual obligations in terms of this are duties where the performance of which enables the proper performance of the contract in the first place, and in the observance of which the customer regularly trusts and may rely upon. Any liability of S+S for slight negligence apart from that is excluded. The same applies to wilful or grossly negligent violation of duties and the slightly negligent violation of material contractual obligations through a legal representative or vicarious agent of S+S. Liability for personal injury remains unaffected by the aforesaid limitation of liability.
- (2) In case of slightly negligent violation of material contractual obligations, liability of S+S is limited in the amount to the contract-typical damage. Contract-typical in terms of this is a damage, when in the normal course of affairs its occurrence in consequence of the committed violation of duty was to be assumed.
- (3) S+S can only be held liable for deliberate breach of duty and not for any consequential damage caused by processing unsuitable or defective goods.

## 8. Retention of title

- (1) Goods delivered remain the property of S+S up to the complete settlement of any and all claims by the customer. As far as the customer alienates goods under reserve without receiving the purchase price from its buyer matching payment with physical delivery or in advance, the customer also has to agree with such buyers reservation of title in accordance with this regulation.
- (2) The customer is not entitled to pledge goods under reserve or to assign such goods for security. In cases of garnishment or other third parties' interventions the customer must notify S+S forthwith in writing.
- (3) The customer is entitled to resell goods under reserve in the course of its regular business operations. The customer already now assigns to S+S all receivables in the amount of the total invoice amount (including VAT) of the claim that are accruing to the customer against its buyers in consequence of the resale, in fact irrespective of whether such goods are alienated without or after processing. The customer also remains entitled to collect the receivable even after assignment, whereas the entitlement of S+S to collect the outstanding amount itself remains thereof unaffected. S+S however undertakes towards the customer not to collect the outstanding amount as long as the customer does not fall behind with payments, or an application for institution of composition or insolvency proceedings has not been filed. If that is the case, the customer upon request by S+S is committed to disclose those assigned receivables and their debtors, to provide the necessary records, and to notify the debtors of the assignment.

## 9. Operating, mounting & installation instructions

The customer undertakes to adhere to operating, mounting & installation instructions being delivered together with goods where appropriate, and also to make possible third-party buyers aware of the same. The complete or partial non-observance of such instructions may cause a complete loss of buyers' rights. This does not apply to possible claims for damages according to § 7.

## 10. Copyright

The customer is not entitled to reproduce or copy any contents of S+S catalogues, in particular technical drawings and photographs, for its own advertising or other purposes without the express written approval by S+S. The customer is not allowed to make quotations or other entrepreneurial documents available to third parties.

## 11. Miscellaneous

- (1) For any disputes arising from or in connection with the contractual relationship, Nuremberg / Germany is agreed as place of jurisdiction. Place of performance is Nuremberg / Germany.
- (2) The customer can only offset against with claims that are undisputed or have been established as final and absolute. The customer is entitled to a right of retention only if its counterclaims originate from the very same contractual relationship, or such claims are undisputed or have been established as final and absolute.
- (3) Modifications of and amendments to the contract require the written form. That also applies to the alteration of this written-form requirement clause.
- (4) In case one or several provisions of these General Terms and Conditions of Sale and Delivery should be ineffective or have not been properly incorporated into the contract, the rest of the provisions of these General Terms and Conditions of Sale and Delivery remain effective.
- (5) Solely the laws of the Federal Republic of Germany are applicable while excluding the law regarding the United Nations Convention on Contracts for the International Sale of Goods (CISG) – also when the customer has its registered office abroad.

These General Terms and Conditions of Sale and Delivery are protected by copyright. Infringements of copyright will be legally prosecuted.