

# **General Terms and Conditions of Delivery and Payment of Sangel Systemtechnik GmbH**

## **1. General provisions**

- 1.1. For all deliveries and services to our customers - hereinafter also referred to as buyer or purchaser - these Terms and Conditions of Delivery and Payment shall apply exclusively. They shall also apply to all future deliveries and services, even if they are not expressly referred to again when contracts are concluded in future.
- 1.2. Objection is hereby expressly made to terms and conditions of purchase or other general terms and conditions of the buyer. They do not bind us even if we do not expressly object to them again when a contract is concluded.

## **2. Offers, catalogues, orders, buyer's duties of inspection, copyrights**

- 2.1. Transmitting a price list or a catalogue does not constitute an offer.
- 2.2. All illustrations and figures in our catalogue are non-binding, especially with regard to the design, size and colour of the products. We reserve the right to make changes in technology and design.
- 2.3. Our offers are subject to change. Orders are only binding for us insofar as we confirm them or comply with them by sending the goods.
- 2.4. The information we provide on the object of performance, the intended use, etc. (e.g. dimensions, weights, utility values) is to be regarded as approximate; they are descriptions or markings and do not constitute any guarantees.
- 2.5. Even after receiving and/or accepting an order, we reserve the right to make changes that serve technical progress, but only to the extent that this is appropriate and reasonable in the individual case.
- 2.6. The information and technical data contained in catalogues, brochures and other written documents as well as on IT storage media or e.g. drawings, sketches and proposals must be checked by the purchaser or planner for suitability for the specific application before acceptance.
- 2.7. We reserve the property rights and copyrights to illustrations, drawings, calculations and other documents. This also applies to such written documents that are marked "confidential". The buyer requires our express written consent before passing them on to third parties.

## **3. Delivery time, delivery, transfer of risk, force majeure, self-delivery**

- 3.1. The stated delivery times are only approximate. Fixed transactions must be expressly agreed.
- 3.2. Delivery times begin at the earliest with the order confirmation being dispatched.
- 3.3. The delivery times we indicate shall start only if all technical questions have been settled and the buyer has promptly and properly fulfilled all its obligations. The delivery times shall be deemed to have been met if we or the sender have dispatched the goods when the delivery times lapse.
- 3.4. Delivery is Ex Works (Incoterm® 2020 EXW) (our domicile).
- 3.5. The transport risk shall be borne by the buyer; this shall also apply if, as an exception, we do not deliver in accordance with the Incoterms of subsection 1, e.g. free delivery.
- 3.6. Transport insurance shall only be taken out at the request and expense of the buyer.
- 3.7. We are entitled to make reasonable partial deliveries. Partial deliveries shall be invoiced at the value of the partial delivery and shall be paid by the buyer in accordance with the provisions of section 5.
- 3.8. In the event of delays in delivery due to force majeure, riot, strike, lockout, raw material depletion or operational disruptions for which we are not responsible, including those affecting our suppliers, the delivery period shall be extended by at least the period until the disruption is remedied, insofar as the disruption has an influence on the manufacture or delivery of the delivery item. We shall inform the purchaser immediately of the beginning and end of such constraints.
- 3.9. We and the purchaser shall also have the right to withdraw from the contract in whole or in part in the event of sustained operational disruptions due to force majeure, riot, strike, lockout, raw material depletion or operational disruptions for which we are not responsible or in the event that we are not supplied by our upstream suppliers through no fault of our own, to the exclusion

- of any claims for compensation. Any services rendered shall be reimbursed immediately in the event of rescission. The party intending to withdraw from the contract in accordance with the above provisions must give two weeks' notice. Sustained operational disruptions in the above sense can be assumed if the disruption lasts longer than five weeks.
- 3.10. Force majeure within the meaning of this section shall in any event be deemed to be an event beyond our control, whose effects on the performance of the contract cannot be prevented by our reasonable efforts, including fire damage, floods, epidemics and pandemics (e.g. the effects of Covid 19). This also applies to such effects via our subcontractors.
  - 3.11. Correct and timely self-delivery remains reserved. We shall inform the purchaser immediately of any delays in delivery. We shall therefore not be liable for delays due to late, missing or non-contractually compliant deliveries by our upstream suppliers, unless we are at fault. The prerequisite is in particular that we have concluded a specific covering transaction.
  - 3.12. For the delivery of piece goods, under- and overlengths plus/minus 10 % are permissible.
  - 3.13. A cable can be delivered in various partial lengths due to production or commercial reasons. In the case of special orders, industry-standard over- or underlengths are to be accepted by the buyer.
  - 3.14. Claims for damages from the point of view of delay in delivery can only be asserted under the conditions of section 7.3.
  - 3.15. The transport risk shall in any case be borne by the buyer, even if, as an exception, we make a free delivery. Insurance shall only be taken out at the request and expense of the buyer.
  - 3.16. Insofar as acceptance is to take place, our deliveries and services shall be deemed to have been accepted, irrespective of other (fictitious) acceptances, if
    - a. the delivery (and, if we are obligated to perform this: the installation as well) has been completed,
    - b. we have notified the buyer of the conclusion of the contract pursuant to a. and have requested acceptance,
    - c. twelve working days have elapsed since delivery or installation or the buyer has started to use our deliveries and/or services (e.g. has put a delivery into operation or processed it) and in this case six working days have elapsed since delivery or installation and
    - d. the buyer has failed to take delivery within this period for a reason other than a defect communicated to us which makes the use of the delivery and/or service impossible or significantly impairs it.

#### **4. Prices**

- 4.1. All prices are plus CU surcharge, which means that copper is invoiced additionally according to the respective daily price.
- 4.2. All prices are exclusive of all customs duties and taxes, in particular value added tax. These will be invoiced at the rates applicable at the time of invoicing.
- 4.3. Prices are Ex Works (Incoterm® 2020) EXW (Bielefeld), excluding packaging, freight and other shipping costs.
- 4.4. In the case of direct dispatch or special procurement, the same applies from the point the goods leave the sender's premises.
- 4.5. In the event carriage paid delivery is agreed, the prices we quote shall be based on the freight and ancillary charges applicable at the time of the offer. If these costs change, we are entitled to adjust the prices accordingly.
- 4.6. If a delivery period of more than four months has been agreed, we shall be entitled to correspondingly pass on to the purchaser any cost increases arising in the interim from price increases for material, manufacture, assembly, personnel, delivery or the like.

## **5. Payment**

- 5.1. Our invoices are due immediately and payable without deduction. This shall also apply to invoices for partial deliveries in accordance with section 3.4.
- 5.2. Discounts and target agreements shall only apply to the respective confirmed order and shall not constitute a deferral of the due date.
- 5.3. Discount deductions that have not been agreed are prohibited. If a discount has been agreed, the invoice date shall be deemed to be the beginning of the discount period in the absence of a special agreement. The discount period shall be deemed to have been observed if the amount owed has been credited to our account in full by the last day of the discount period at the latest.
- 5.4. In the event of default in payment, the buyer shall pay default interest in the amount of 12 %, but at least in the amount of the statutory interest rate pursuant to section 288 (2) of the German Civil Code (BGB). Insofar as the interest pursuant to sentence 1 exceeds the statutory interest rate, the buyer shall be free to prove that damage caused by default did not occur or did not occur in this amount. We reserve the right to assert higher damage caused by default.
- 5.5. If the buyer defaults on a payment – for whatever legal reason – including a bill of exchange or cheque, or if it has suspended its payments, all of our outstanding invoice amounts shall be-come due immediately, even if longer payment periods have been granted in individual cases.
- 5.6. If there is a significant deterioration in the financial circumstances of the buyer which jeopardises our claim arising from the respective legal relationship, we shall be entitled to demand advance payment or appropriate security. This shall also apply if such circumstances existing prior to the conclusion of the contract only become known to us subsequently. If the advance payment or security deposit is not made within the grace period despite a reminder and the set-ting of a reasonable grace period, we shall be entitled to withdraw from the contract and to claim damages, in particular damages in lieu of performance. In the aforementioned cases, a payment or security deposit cannot be made dependent on the return of current bills of exchange.

## **6. Set-off and right of retention**

- 6.1. A set-off by the buyer with counterclaims or the assertion of a right of retention by the buyer is excluded, unless the set-off or the right of retention is based on the same legal relationship or section 320 BGB or the claims are undisputed or have been legally established.

## **7. Claims for defects / claims for damages**

- 7.1. The purchaser shall be obliged to carefully examine drafts, preliminary and intermediate products which have been made available to it for inspection and to give notice of defects.
- 7.2. The notice of defects shall be made in writing. Services performed in accordance with a declared release shall be deemed to be in accordance with the contract.
- 7.3. Insofar as we are obliged to subsequent performance, this shall be effected at our discretion by rectification of defects or subsequent delivery. Section 377 of the German Commercial Code (HGB) remains unaffected.
- 7.4. Minor, technically unavoidable deviations in quality, colour, width, weight, appurtenances or design do not constitute defects. This also applies to industry-standard deviations unless we have agreed on a delivery true to sample.
- 7.5. Replaced parts become our property. In the event of rectification of the defect, we shall be obliged to bear all expenses necessary for the purpose of rectifying the defect, in particular transport, travel, labour and material costs, insofar as these are not increased by the fact that the purchased item has been taken to a place other than the contractually stipulated place; the rights of the buyer pursuant to section 439 (3) BGB shall not be restricted by this.

- 7.6. In addition, the purchaser shall be entitled to the additional statutory claims for rescission of the contract and reduction of the purchase price, insofar as the statutory requirements for these are fulfilled. Claims for damages exist exclusively in accordance with the following provisions.
- 7.7. In the event of a culpable breach of a material contractual obligation (so-called cardinal obligation), we shall be liable for damages if the statutory requirements are met, but the amount shall be limited to the typically occurring and foreseeable damage, unless otherwise stipulated below. Cardinal obligations are obligations the fulfilment of which is essential for the proper performance of the contract and the observance of which the purchaser may regularly rely on, as well as obligations the breach of which jeopardises the achievement of the purpose of the contract.
- 7.8. In accordance with statutory provisions, the purchaser shall be entitled to claims for damages against us without restrictions in the statutory amount if we, one of our legal representatives or proxies are at fault and said claims are based on
- culpable injury to life, limb or health, or
  - an intentional or grossly negligent breach of duty or
  - mandatory statutory provisions on liability (e.g. The German Product Liability Act or data protection law) or
  - the breach of an obligation arising from a procurement risk or guarantee assumed by us.

Further claims for damages against us, our legal representatives and proxies are excluded, irrespective of the legal grounds on which they are based.

The legal distribution of the burden of proof remains.

## **8. Limitation of claims for defects**

- 8.1. Claims of the buyer based on material defects shall lapse after one year, unless,
- a. the goods delivered by us are an item which has been used for a building in accordance with its common use and which has caused its defectiveness or
  - b. the defect was fraudulently concealed or is based on an intentional breach of duty by us or our legal representatives or proxies or
  - c. the claims are based on a guarantee or procurement risk assumed by us, or
  - d. claims for damages are at issue or
  - e. claims under section 445a BGB are at issue.
- 8.2. In the cases of a. to d. the statutory limitation periods shall apply.  
In case e. the statutory limitation periods shall also apply if the last contract in the supply chain is a purchase of consumer goods within the meaning of section 474 BGB (in particular: final buyer as a consumer buys an item from an entrepreneur); otherwise (i.e. without the involvement of a consumer as the final buyer) the limitation period is 14 months.
- 8.3. The statutory provisions on inhibition, inhibition of expiry as well as the commencement and recommencement of the limitation period shall apply.
- 8.4. Sections 8.1 to 8.3 shall apply mutatis mutandis to defects of title.

## **9. Retention of title**

- 9.1. If we have already received the full payment for an item when it is delivered, ownership shall pass to the customer when the item is handed over to the customer, unless otherwise agreed in individual cases.

- 9.2. If the delivery constitutes advance performance on our part – i.e. if the goods are delivered at a time at which we have not yet received the remuneration due on the respective goods or have not received it in full (retained goods) – the following shall apply in addition:
  - 9.2.1. We retain title to all goods delivered by us subject to retention of title until the purchase price has been paid and beyond that until the settlement of all our claims arising from the business relationship, including from contracts concluded at a later date and irrespective of the legal grounds – including all contingent liabilities (in particular payment by cheque or bill of exchange).
  - 9.2.2. In the event that the retention of title only becomes valid by entry in certain registers or/and in compliance with other special legal requirements, the buyer undertakes to cause these conditions to be fulfilled. All resulting costs shall be borne by the buyer.
  - 9.2.3. The buyer is entitled to process and resell the retained goods in the ordinary course of business as long as it is not in default with the fulfilment of its obligations towards us or does not stop its payments. In particular, the following shall apply:
    - 9.2.3.1. The processing or transformation of the retained goods shall be carried out for us as the manufacturer within the meaning of section 950 BGB without placing us under any obligations. The buyer shall not acquire ownership of the new item by processing or transforming the retained goods .
- 9.3. If the retained goods are processed, mixed, blended or combined with other items, we shall acquire co-ownership of the new item in a proportion corresponding to the ratio of the invoice value of our retained goods to the total value.
- 9.4. The provisions applicable to the retained goods shall apply mutatis mutandis to the co-ownership shares arising under the above provisions.
  - 9.4.1.1. The buyer hereby assigns to us the claims arising from the resale or other sales transactions, such as contracts for labour and materials, together with all ancillary rights, and also on a pro rata basis insofar as the retained goods have been processed, mixed or blended and we have acquired co-ownership thereof in the amount of our invoice value or the goods have been permanently installed.
- 9.5. Insofar as the retained goods are processed, mixed, blended or permanently installed, we shall be entitled to a priority fraction of the respective claim from the resale in the ratio of the invoice value of our retained goods to the invoice value of the item.
- 9.6. If the retained goods are sold by the buyer together with other goods not delivered by us, the buyer hereby assigns to us a priority share of the claim from the resale in the amount of the invoice value of our retained goods.
- 9.7. If the buyer has sold this claim within the scope of genuine factoring, it hereby assigns to us the substituted claim against the factor.
- 9.8. If the buyer places the claim from the resale into a current account relationship with its customer, the buyer hereby assigns its claims from the current account relationship to us in the amount of the invoice value of the retained goods.
- 9.9. In particular, the assignment includes not only claims for payment, but also claims for surrender, in particular in the event that the buyer also resells subject to retention of title.
  - 9.9.1.1. We hereby accept the above assignments.
  - 9.9.1.2. The buyer shall be entitled to collect the claims assigned to us until our revocation. The authorisation to collect shall expire upon revocation, which shall take place in the event of default in or cessation of payment by the buyer. The same applies in the event of a significant deterioration in the financial circumstances of the buyer which jeopardises our claim. In these cases, we are authorised by the buyer to inform the customers of the assignment and to collect the claim ourselves.
  - 9.9.1.3. Upon request, the buyer is obliged to provide us with a precise list of the claims to which the purchaser is entitled, including the names and addresses of the customers, the amount of the individual claims, invoice date, etc., and to provide us with all information and documents necessary for the assertion of the assigned claims and to allow us to verify this information.

- 9.9.1.4. Amounts received by the buyer from assigned claims are to be kept separately for us until the transfer.
- 9.9.2. Pledges of or chattel mortgages on the reserved goods or the assigned claims are not permitted. We are to be informed immediately of any attachments, stating the attaching creditor.
- 9.9.3. If the value of the security to which we are entitled exceeds our total claim against the buyer by more than 10 %, we shall be obliged, at the buyer's request, to effect release to that extent.
- 9.9.4. In the event of default in or cessation of payment by the buyer, we shall be entitled to take back the retained goods, subject to the additional statutory conditions. We may freely satisfy our claims from the retained goods taken back.
- 9.9.5. The buyer shall store the retained goods for us free of charge. It shall insure them against usual risks such as fire, theft and water to the usual extent. The buyer hereby assigns to us its claims for compensation to which it is entitled vis-à-vis insurance companies or other parties with a duty of compensation as a result of damage of the aforementioned kind in the amount of our claims. We accept the assignment.

**10. Place of performance/legal venue/applicable law**

- 10.1. The place of performance is our domicile. This also applies to the place of subsequent performance.
- 10.2. The legal venue is our domicile if the purchaser is a merchant, a legal entity under public law or a special fund under public law or if the purchaser does not have his own general legal venue in Germany.
- 10.3. If the customer has its registered office outside the Federal Republic of Germany, we shall also be entitled to bring a claim against our customer at the customer's general legal venue.
- 10.4. The contractual relationship shall be governed by German law to the exclusion of legal provisions that refer to other legal systems (private international law) and to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

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