
Standard Terms and Conditions of Business for Deliveries, Services and Payments

1. Scope of Application of the Terms and Conditions

1.1 Our deliveries and services shall be made or rendered exclusively pursuant to these Terms and Conditions of Business and any separate contractual agreements. Deviating terms and conditions of business of the Purchaser that we have not expressly recognised in writing shall not be applicable.

1.2 Agreements deviating from these Terms and Conditions and/or any collateral agreements must be in writing.

1.3 Our Terms and Conditions of Business do not apply in relation to consumers. Subject to any subsequent amendments, these Terms and Conditions apply equally to all future deliveries. Our Standard Terms and Conditions of Business for Customer Services and Deliveries of Spare Parts as valid at the time are available at www.turbo-hks.com

2. Tenders and Conclusion of Contracts

2.1 Our tenders shall be subject to change without notice and shall not be binding. Purchase orders / listings shall become binding only upon our written acknowledgement. The same applies accordingly to any supplements, changes or collateral agreements.

2.2 A supply contract shall be formed only upon our written acknowledgement of the order, but no later than when the goods are dispatched or delivered to the Purchaser or collected by the Purchaser. A written order acknowledgement sent by remote data transmission shall meet this form requirement. If we can prove by submitting a transmission report that we have sent a declaration by telefax or by some other means of remote data transmission, it shall be assumed that the Purchaser has received the declaration.

2.3 Where we use a teleservice or media service for the purpose of concluding a contract, the Purchaser shall waive its right to notification of information due pursuant to section 241 of the Introductory Act to the German Civil Code [EGBGB], section 312 e of the German Civil Code [BGB] in conjunction with the Ordinance on Duties to Inform under Civil Law (BGB-Info VO, Federal Law Gazette I 2002, page 243) and its right to confirmation of the receipt of its purchase order. Purchase orders sent by electronic means shall first be deemed received once we have retrieved and opened these. We reserve the right to delete purchase orders without opening them.

2.4 Information, drawings, illustrations and performance specifications contained in the documentation forming part of the tender are typical approximations used in the trade, except where they are expressly referred to as binding in the order acknowledgement. We expressly reserve the right to make technical alterations that, in our estimation, serve to improve our products.

3. Prices and Payment

3.1 Except where otherwise agreed, all our prices are ex works (excluding turnover tax, packaging and unloading). Our prices shall be charged exclusively in euros. Payments shall be made exclusively in euros at no cost to us.

3.2 Except where otherwise agreed, payments shall be due on delivery, but no later than upon receipt of the invoice. In the case of units and installations with an individual value in excess of 20,000.00 EUR, payment shall be made as follows without any deduction: a down payment of 1/3 upon receipt of the order acknowledgement, 1/3 upon notification that the main parts are ready for dispatch, and the residual amount within one month after the passage of risk (cf. No. 5 of these Terms and Conditions).

3.3 In the case of all means of payment, the day when we have the amount at our disposal shall be deemed the day when payment is received.

3.4 If a delivery of goods is merely partially defective, the Purchaser shall remain obliged to pay the price for the part of the goods that is free from defects. In all other respects, it is agreed that the Purchaser may only set off against claims that have been declared final and absolute, are undisputed or have been recognised by us.

3.5 Our invoices shall be paid regardless of receipt of the goods. This shall not affect the Purchaser's right to complain.

3.6 In the event of default in payment, we shall charge interest at the rate of at least 8 percentage points above the base interest rate during the period of default, except where we are able to claim a higher rate of interest on any other legal ground. We reserve the right to assert a more extensive claim for damages caused by default.

3.7 If payment is delayed, we may - after having correspondingly notified the Purchaser in writing - cease to perform our obligations until we have received payment.

3.8 If the Purchaser calls in a central settlement organisation, the settlement of the invoice shall release the Purchaser from its debt only once the amount has been credited to our account.

3.9 If the financial circumstances and/or credit standing of the Purchaser deteriorate such that our claim for payment is endangered, we shall be entitled to demand immediate payment of the entire residual debt. In this case, we shall be at liberty to claim, within a reasonable period, advance payments or the provision of security in reasonable amounts in each particular case and to suspend our performance until our claim is met. If the Purchaser refuses to pay or fails to do so within the fixed time limit, we shall be entitled to cancel the contract and/or claim damages for non-performance. An application for the initiation of insolvency proceedings concerning the Purchaser's assets shall equally entitle us to cancel the contract and demand that the goods delivered be returned without delay.

4. Delivery

4.1 The delivery period shall ensue from the agreements made. Even if a delivery period based on the calendar is agreed upon, the transaction shall not be a transaction where time is of the essence within the meaning of section 376 (1) of the German Commercial Code [HGB]. Provided that we our-

selves are properly supplied in due time, agreed time-periods based on the calendar shall begin on the day of acknowledgement of the order, but not before all technical and commercial issues have been cleared up and all duties falling to the Purchaser have been performed (e.g. necessary official certificates or permits have been submitted, any down payment has been made). If this is not the case, the delivery period shall be reasonably extended. Any agreement on delivery dates or time-periods must be in writing.

4.2 Even where time-periods and dates have been agreed upon on a binding basis, we shall not be responsible for delays in delivery and/or performance due to force majeure or due to events that make it considerably more difficult or impossible for us to deliver, including in particular industrial disputes, riots, actions taken by authorities, failure to supply on the part of our suppliers etc.. These shall entitle us to postpone the delivery or performance by the duration of the impediment plus a reasonable start-up period or to cancel the contract in whole or in part on account of the part not yet performed. The Purchaser shall not be entitled to derive damage claims from this. If the aforementioned impediments occur at the Purchaser, the same legal consequences shall equally apply to the Purchaser's obligation to accept.

4.3 Moreover the Purchaser may cancel the contract if, in the case of a purchase order, it becomes impossible to carry out part of the delivery and the Purchaser has a justified interest in refusing to accept partial delivery. If this is not the case, the Purchaser shall be required to pay the contract price falling to the partial deliveries. If impossibility or inability to perform occurs during a period of default in acceptance, or if the Purchaser is solely or predominantly responsible for these circumstances, the Purchaser shall remain obliged to render counter-performance.

4.4 Partial deliveries and partial performances shall be permissible, to the extent that they are customary in the trade, and shall be invoiced separately. By way of exception, these shall only be impermissible where the Purchaser has no interest in partial performance of the contract.

4.5 If we are in default and the Purchaser incurs damages as a result thereof, the Purchaser shall be entitled to claim flat-rate compensation for default. For every full week of delay, this compensation shall amount to 0.5 %, but in total no more than 5 %, of the value of the part of the overall delivery that cannot be used in due time or in conformity with the contract due to the delay. The Purchaser shall be free to prove higher damages.

4.6 A delivery period shall be deemed to have been met if the goods delivered have left our works, or if notification of readiness for dispatch has been given, by the time the delivery period expires. Where acceptance of delivery is to occur, the set date for acceptance or alternatively the date of notification of readiness to accept delivery of the goods shall apply, except where acceptance of delivery is refused with justification. If there is a delay in dispatching or a delay in accepting delivery of the delivered goods for reasons attributable to the Purchaser, the Purchaser shall be charged for costs incurred due to the delay, as from the end of a 14-day period following notification of readiness for dispatch or notification of readiness to accept delivery.

5. Dispatch and Passage of Risk

5.1 Dispatch shall occur ex works and (except where otherwise agreed) without any obligation in respect of the cheapest method of dispatch.

5.2 Even where delivery is made at no charge, the risk shall pass to the Purchaser once the goods have been handed over to the appointed forwarder or have been loaded onto its vehicle, but no later than when the goods have left our works, even where our own means of transportation are used. The same shall apply if partial deliveries are made or we have agreed to render some other performance, e.g. to bear the cost of dispatch or delivery and installation. Where work performed is subject to acceptance, acceptance shall be decisive for the passage of risk. The acceptance inspection must be carried out without delay on the set date for acceptance (No. 5.4).

5.3 If dispatch is delayed for reasons not attributable to us, the risk shall pass to the Purchaser once notification of readiness for dispatch is received.

5.4 If acceptance is necessary, the Purchaser shall be obliged to accept services that are in conformity with the contract following notification of their completion, where applicable following any testing contractually stipulated in the specific case. The performance shall be deemed accepted at the time the installation or the unit is commissioned, but no later than at the end of the fifth working day following notification of completion, whereby we shall not be required to fix a further time-period. The Purchaser shall not have the right to refuse to accept on account of the existence of a minor defect.

5.5 In the event of transport damage, the Purchaser shall order the appropriate departments to ascertain the facts and shall notify us without delay.

5.6 Neither transport packaging nor any other packaging shall be taken back (except where otherwise agreed and subject to regulations under the Ordinance on the Avoidance and Recycling of Packaging Waste [Verordnung über die Vermeidung und Verwertung von Verpackungsanfällen] [Federal Law Gazette I 1998, page 2379]).

5.7 We shall be entitled, but not obliged, to insure deliveries in the name of and for the account of the Purchaser against theft, breakage, fire, water and other damage, except where the Purchaser itself has provably taken out such insurance.

6. Reservation of Title

6.1 We shall reserve title in the delivered goods until all claims arising from the business relationship with the Purchaser have been fulfilled.

6.2 The Purchaser shall be entitled to resell goods under reservation of title in the ordinary course of business, provided that the Purchaser equally reserves title until its claim arising from the resale has been paid in full and the Purchaser meets in due time its obligations arising from the business relationship with us. However, the Purchaser may not pledge goods under reservation of title or use them as security and shall be obliged to safeguard our rights when reselling goods under reservation of title on credit.

6.3 Any assertion of the reservation of title and/or any levy of execution on goods under reservation of title in the event that the Purchaser defaults on payment shall not be deemed cancellation of the contract, except where we have given express written notice of cancellation.

6.4 Any processing or transformation of the goods by the Purchaser shall always be carried out on our behalf. If goods under reservation of title are processed together with items that do not belong to us, we shall acquire co-ownership of the new item in the ratio of the invoiced value of the goods

under reservation of title to the invoiced value of the other processed items at the time of processing.

6.5 If goods under reservation of title are inseparably mixed with other items that do not belong to us, we shall acquire co-ownership of the new item or the property as a whole in the ratio of the invoiced value of the goods under reservation of title to the invoiced value of the other mixed items. In this case, the Purchaser shall act as a custodian of the joint property on our behalf.

6.6 The Purchaser already now assigns to us, as security in the sum of the purchase price (plus value-added tax) agreed upon between us and the Purchaser, all claims and rights arising from the sale or any other disposal of goods in which we have rights of title. The same applies on a pro rata basis to the extent that the goods have been processed or mixed and we have acquired co-ownership of the new item or the property as a whole. In the latter case, this assignment shall entitle us to a pro rata first-ranking portion of the total claim arising from reselling. Where goods under reservation of title are sold together with other goods that we have not delivered, the Purchaser hereby assigns to us a first-ranking portion of the claim arising from reselling in the sum of the invoiced value of the goods under reservation of title. If the Purchaser has sold a claim arising from reselling in the course of old-line factoring, the Purchaser hereby assigns to us the substitute claim against the factor. Where a claim arising from reselling is included in a current account relationship with a customer, the Purchaser hereby assigns to us its claims arising from the current account relationship in the sum of the invoiced value of the goods under reservation of title. We hereby accept all assignments of claims.

6.7 In the event that a third party takes debt enforcement measures that affect goods under reservation of title and/or claims assigned to us or any other security, the Purchaser shall inform us without delay, submitting any documents necessary for us to intervene in such enforcement proceedings. This applies equally to any other kinds of detrimental impact. Furthermore, the Purchaser shall at our request provide us with all necessary information on the existence and location of goods under reservation of title and on claims assigned to us.

6.8 We undertake to release the security that we are entitled to under the above provisions to the extent that the realizable value of the goods under reservation of title exceeds by more than 20 % the unsettled claims to be secured.

6.9 If the Purchaser acts in breach of the contract, in particular by defaulting on payment, we shall be entitled to take back goods under reservation of title after having given one warning, and the Purchaser shall be obliged to surrender possession of the goods.

7. Warranties

7.1 We do not give any warranty for defects resulting from unsuitable or improper use (in particular the use of media other than those taken as a basis in the tender), faulty assembly or commissioning by the Purchaser or a third party, normal wear and tear, faulty or careless handling, improper maintenance, use of unsuitable operating materials, defective construction work, unsuitable subsoil and/or chemical or electro-chemical or electrical influences. The same applies to consequences of improper alterations made by the Purchaser or a third party without our consent.

7.2 Obvious defects in goods delivered by us must be reported to us and be complained about without delay. In the case of hidden defects, the period allowed for reporting and complaining about defects shall be extended to no longer than 2 weeks after receipt of the goods. If there is a defect for which we are responsible, we shall, at our option, remedy the defect or deliver a replacement, provided that the Purchaser has complained about the defect in due time. The Purchaser shall have the right to remedy the defect itself or through a third party, and demand compensation from us for its necessary expenses, only in emergencies where plant safety is endangered or to avoid unreasonably greater damage, whereby we must be informed without delay. Where a defect is to be remedied, we shall be obliged to bear all expenses necessary for the purpose of remedying the defect, in particular the cost of carriage, transportation, labour and materials, except where such costs are higher because the Purchaser has taken the purchase item to a place other than the place of performance. For deliveries abroad our service to be rendered within the framework of warranty shall be limited to the supply of replacement for defective parts (delivery ex works) provided that the damage is deemed to be sought in our responsibility. Replaced parts shall become our property. Once a defect becomes apparent, any processing of the defective goods must be immediately discontinued.

7.3 If a first attempt to remedy a defect fails, or if a delivered replacement is defective, we shall be entitled to either reattempt to remedy the defect or deliver another replacement within a reasonable additional period.

7.4 If a repeated attempt to render subsequent performance also fails, or if we have not met our duty to render subsequent performance, the Purchaser shall be entitled pursuant to legal regulations to cancel the contract or reduce the purchase price for the purchase order and claim compensatory damages pursuant to these Standard Terms and Conditions of Business or the reimbursement of expenses incurred in vain.

7.5 Warranty claims for defects that we are not responsible for are excluded. Claims for cancellation of the contract and for compensatory damages in lieu of performance pursuant to No. 7.4 are excluded if and to the extent that the defect asserted does not restrict, or only insignificantly restricts, the fitness of the goods for the contractually assumed use or the use typical of goods of the same kind.

7.6 Claims pursuant to sections 437, 634 a of the German Civil Code shall become time-barred within one year after the passage of risk, except where they relate to building materials within the meaning of section 438 (1) no. 2b of the German Civil Code. The warranty period for used goods (in particular used spare parts and exchange parts) is six months as from the passage of risk.

7.7 The above provisions do not apply in so far as they exempt us from our liability for malicious concealment of a defect or for a guarantee given.

8. Recourse Claim

8.1 As soon as an intermediary notifies the Purchaser of an assertion of rights in respect of a defect in goods that we have delivered, the Purchaser shall inform us thereof within a 5-day period. If the Purchaser ignores this time-limit, recourse claims against us shall be excluded.

8.2 If the Purchaser has resold the newly manufactured item to an intermediary, and if the last seller pursuant to section 478 of the German Civil Code has to take back the goods or reduce the purchase

price, the Purchaser shall equally have these warranty rights in relation to us. No other warranty right may be asserted in relation to us, if this would place us at an unreasonable disadvantage. However, a recourse claim shall be excluded in relation to us to the extent that a claim has not been made, or has not been made in full, upon the Purchaser or an intermediary itself pursuant to section 437 of the German Civil Code.

8.3 If, as the recourse creditor, the Purchaser asserts in relation to us claims for a price reduction pursuant to section 478 of the German Civil Code, the purchase price shall be reduced in the ratio ensuing from section 441 (3) of the German Civil Code, whereby the above provision shall continue to apply. This price reduction shall be limited by the amount of the price reduction actually credited to the respective end-user purchaser of our goods beforehand. If no full or partial repayment based on a price reduction is made in a contractual relationship preceding the recourse relationship, the recourse claim in relation to us shall be excluded wholly or partially in the corresponding ratio. Sentences 1 and 2 shall apply accordingly if the Purchaser, as the recourse creditor, claims from us compensatory damages, except where the damages go beyond the purchase item.

8.4 We shall be entitled to reimburse expenses in the context of recourse pursuant to section 478 of the German Civil Code only in the form of credit vouchers for goods.

8.5 In any event, we shall not reimburse expenses that would not have been incurred if the Purchaser had made adequate and reasonable precautions for subsequent performance.

9. Liability

9.1 Except where otherwise provided below, other and more extensive claims of the Purchaser against us are excluded. This particularly applies to damage claims based on default, impossibility of performance, culpable breach of contractual subsidiary duties, culpa in contrahendo and tort. Therefore, we shall not be liable for consequential damages (e.g. lost profit) or other pecuniary losses that have not occurred on the delivered goods themselves.

9.2 The above limitations of liability shall not apply in cases where we are liable under the provisions of the Product Liability Act [Produkthaftungsgesetz]. They shall equally not apply if a negligent or intentional breach of duty arising from the contractual relationship leads to personal injury or if a grossly negligent or intentional breach of a duty arising from the contractual relationship causes the Purchaser some other damages. In the case of all other damages in the context of the above sentence, liability shall however be limited to damages that can typically occur. This does not include consequential damages (such as lost profit for example).

9.3 Furthermore, the limitations of liability shall not apply where we have maliciously concealed a defect in goods delivered by us or have given a guarantee for the condition of the item, provided that the guarantee was specifically intended to protect the Purchaser against damages not arising on the delivered goods themselves.

9.4 Where our liability is excluded or limited, this shall apply accordingly to the personal liability of our statutory representatives and persons assigned by us to perform an obligation.

10. Sales Aids, Confidentiality

10.1 We shall reserve ownership rights and copyrights in samples, cost estimates, drawings and similar information of a physical and non-physical kind, also where in electronic form. These may not be made accessible to third parties. Whilst the Purchaser is using samples, every risk in connection therewith shall pass to the Purchaser. The Purchaser undertakes to compensate us for any loss or damage for which it is responsible.

10.2 We equally undertake not to make accessible to third parties any information or documents that the Purchaser has referred to as confidential, except where the Purchaser has given its consent thereto.

11. Miscellaneous

If a provision in these Terms and Conditions of Business or a provision in the context of any other agreements is or becomes ineffective, this shall not affect the validity of any other provisions or agreements. Ineffective or lacking clauses shall be replaced by effective clauses that come closest to the object aimed at in commercial terms.

12. Governing Law, Place of Jurisdiction, Place of Performance, Data Protection

12.1 These business relations as well as any and all legal relations between the Parties shall be governed by the laws of the Federal Republic of Germany. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG - "Vienna Sales Convention") dated 11 April 1980 is excluded.

12.2 Gottmadingen is the place of performance for deliveries and payments.

12.3 Gottmadingen shall be the place of jurisdiction for all legal disputes, including those arising in the context of proceedings for the enforcement of payment by check or bill of exchange. We shall also have the right to file suit at the Purchaser's registered place of business.

12.4 Note pursuant to section 26 of the German Data Protection Act [BDSG]: We shall store personal data of our customers. (Please note our privacy policy)