

Siloxa Engineering AG General Terms and Conditions of Delivery and Installation

1. Area of validity

1.1. The following Terms and Conditions of Delivery and Installation shall apply to all agreements, deliveries and services, including those in the future, in which we are the purchaser or supplier of goods. By placing an order, our customers declare their acceptance of the following Terms and Conditions of Delivery and Installation.

1.2. We hereby object to any orders being confirmed by our Customers on the sole basis of their own terms and conditions of purchase. Our Terms and Conditions of Delivery and Installation shall be deemed to have been accepted by no later than the receipt of our goods or services or upon clearance for dispatch.

2. Offer / Conclusion of contract

2.1. We reserve title and copyright to our offers, drawings, prototypes, illustrations, descriptions and all other documents, including those in electronic format. These must not be made available to third parties, especially competitor companies, and must be returned on request.

2.2. Our quotations are without obligation and are non-binding. Orders from customers shall be considered binding.

2.3. Contracts shall only be valid upon our written confirmation of orders received. We may confirm orders within four weeks of receipt of an order or contract. Orders may also be confirmed in the form of an invoice, delivery note or delivery itself.

2.4. With regard to the content of agreements between us and our customers, written agreements or written confirmation from us shall be authoritative.

3. Scope of delivery / services

3.1. We reserve the right to make changes to construction, form or conceptual design in realising the subject of the contract, provided and insofar as the subject of the contract is not thereby substantially altered and the changes seem reasonable to the customer.

3.2. Other services such as assembly, installation, commissioning or maintenance of the subject of contract shall only fall under the scope of contract when this is expressly agreed. Our "General Terms and Conditions of Service for Repairs/Maintenance to Machinery and Equipment" shall apply to the provision of maintenance and repair services. These are available online at <http://www.siloxa.com/die-siloxa/agb.html>.

4. Installation / Commissioning

4.1. Insofar as the services contractually due from us include the installation and/or commissioning of plants or plant components, the customer shall support installation personnel with the performance of said services in accordance with the terms and conditions and provisions in this Clause 4.

4.2. The customer shall take the necessary special precautions to protect personnel and property at the installation site. The customer shall inform the site supervisor of any special safety provisions insofar as these are relevant to the installation personnel. It shall notify the installation contractor of breaches of such safety provisions by installation personnel. In the event of serious breaches, the customer may refuse the contravening party access to the installation site in consultation with the site supervisor.

4.3. Furthermore, the customer shall undertake to provide technical assistance at its own expense, in particular to:

(a) provide the necessary appropriate auxiliary personnel (brick layers, carpenters, fitters and other specialists, back-up personnel) in the number required for installation and for the period required; the auxiliary personnel shall follow the instructions given by the site supervisor. We shall accept no liability for auxiliary personnel provided by the customer. If a defect or damage is caused by auxiliary personnel on the basis of instructions given by the site supervisor, then Clauses 10 and 11 shall apply.

(b) complete all excavation, construction, foundation and scaffolding work, including procurement of the requisite building materials.

(c) provide the requisite equipment and heavy equipment (such as lifting gear, compressors, field forges) as well as the requisite items and materials (such as construction timber, retainer keys, bedding layers, cement, plaster and sealing materials, lubricants, fuels, drive cables and belts).

(d) provide heating, lighting, power, water, including the required connections.

(e) provide the required dry, lockable rooms for storage of installation personnel tools.

(f) transport assembly components to the installation site, protection of the installation site and materials against damaging influences of any kind, cleaning of the installation site.

4.4. Technical assistance provided by the customer must ensure that installation commences immediately following the arrival of installation personnel and can be completed without delay until acceptance by the customer. Insofar as particular plans or guidance are required from us, we shall make these available promptly to the customer.

4.5. If the customer fails to meet its obligations, we shall be entitled, but not obliged, following the respective deadline, to proceed with the action for which the customer is responsible in place of the latter and at its expense. Moreover, our statutory rights and claims shall remain unaffected.

5. Prices

5.1. Unless expressly agreed otherwise, our prices shall be ex warehouse/factory. Agreed prices shall be exclusive of delivery costs, transport costs, expenses, discounts, other allowances and VAT.

5.2. Unless agreed otherwise, the payment to be made by the customer for the delivery of equipment shall be due and payable as follows:

(a) In the case of deliveries of equipment, which also include the installation and/or commissioning of plants or plant components:

- 30% following confirmation of order
- 60% following delivery or notification of readiness for dispatch,
- 10% after commissioning, no later than 4 weeks after delivery.

(b) In the case of other equipment deliveries:

- 100% following delivery unless the agreed price for the respective delivery exceeds EUR 10,000.00.
- 30% following confirmation of order and 70% following delivery if the agreed price for the respective delivery exceeds EUR 10,000.00.

5.3. Unless the parties agree otherwise, installation and commissioning services shall be billed on the basis of actual time spent at our applicable general hourly rates.

5.4. Our prices shall be based on the market prices prevailing at the time of order confirmation, including prices for steel and electrical products. Should market prices increase after an order has been confirmed and prior to the delivery date, we shall be entitled to pass these price increases on to our customers. The customer shall be obliged to accept increases of this type in the agreed price of up to 5%. In the event of a price increase exceeding 5%, the customer shall be entitled to withdraw from the contract. If a customer has not notified withdrawal within 14 days of being informed of a price increase and the associated right of withdrawal, the price increase shall be deemed to be accepted.

6. Delivery and performance, delayed delivery

6.1. The time of performance and lead time shall be agreed between the contracting parties. Compliance with said time of performance and lead time by us shall require the resolution of all commercial and technical issues between the contracting parties and the fulfilment of all the responsibilities incumbent upon the customer, such as provision of the necessary official certificates or licences, performance of required preliminary work or the payment of an agreed advance. If this is not the case, the lead time shall be extended appropriately. This shall not apply if we are responsible for the delay. Costs relating to waiting time, travel and other additional expenses arising from the delay for which the customer is responsible shall be charged to the customer. Costs relating to waiting time, travel and other additional expenses arising from a delay for which the customer is responsible shall be charged to the customer.

6.2. Meeting delivery and performance deadlines shall be subject to correct and prompt delivery to us, subject to the condition that we have reached an appropriate covering transaction, neither us nor our suppliers are at fault and we are not obliged with respect to procurement in individual cases. We shall notify the customer of any delays that become apparent as soon as possible.

6.3. The delivery deadline shall be met if the subject of delivery has left our factory before its expiry or readiness for dispatch has been reported. Insofar as acceptance is required, the acceptance date or alternatively the notification of readiness for dispatch shall be authoritative (except in cases of justified non-acceptance).

6.4. If the scope of delivery is changed or extended from the original order, new delivery and completion deadlines shall be agreed.

6.5. No liability shall be accepted if the observance of agreed delivery and completion deadlines is prevented by force majeure, strike, lockout or other circumstances for which we are not responsible. If the situation cannot be remedied within three months, both parties shall be entitled to withdraw from the contract without penalty. We shall notify the customer of the beginning and end of such situations as soon as possible.

6.6. We shall be entitled to reasonable partial performance and partial deliveries.

7. Transfer of risk/Acceptance

7.1. Insofar as acceptance is required according to agreements, this shall be authoritative in terms of the transfer of risk. Acceptance shall occur upon notification of the first successful start-up for which an acceptance report has been prepared. Minor defects or outstanding work which does not significantly affect plant operation shall not entitle the customer to refuse acceptance.

7.2. For all other services (for example, deliveries, spare parts, accessories), the transfer of risk shall take place on handover, or, in the case of dispatch, on handover to the forwarder or other third party appointed to send the consignment. Handover shall be deemed complete even if the customer defaults on acceptance.

7.3. If acceptance, handover or dispatch is delayed or has not happened as a result of circumstances not attributable to us, the risk shall transfer to the customer from the date of notification of readiness for dispatch or acceptance. We shall be obliged to take out insurance requested by the customer at the latter's expense.

8. Payment, payment arrears

8.1. Our invoices shall always be payable in full immediately upon receipt by the customer.

8.2. Cheques and bills of exchange shall be accepted only as an undertaking to pay, and bills of exchange only after special agreement and with reservation for possible discounting. Discount charges, bills of exchange tax and other costs in connection with the negotiation of bills of exchange shall be paid separately.

8.3. In the event of failure to meet payment deadlines or other payment terms, suspension of payments, or in the event of filing a request to open insolvency or composition proceedings against the assets of the customer or the coming to light of any other circumstances which reduce the customer's creditworthiness, all claims on our part shall fall due immediately, even if bills of exchange or cheques have been accepted. In such cases we shall be entitled to demand immediate cash payment or security - if necessary in advance - and if these are not forthcoming within a reasonable period, to withdraw from the contract without prejudice to our other rights.

8.4. Subject to our other rights, in the event of delayed payments we shall charge bank interest and collection costs. Furthermore, all discounts, allowances and other deferred payments shall lose their validity.

8.5. A right of retention or offsetting on the part of the customer shall be excluded unless the customer is entitled to undisputed or legally binding claims.

9. Reservation of title

9.1. Goods supplied shall remain our property until all claims against the customer existing at the time of delivery as well as any future claims arising from the business relationship with the customer have been satisfied. This shall also apply if any of our outstanding debts are included in a running account and the balance has been calculated; the reservation of title shall then relate to the respective balance claims. Payment through bills of exchange and cheques shall not be considered payment until the respective bill or cheque has been cashed.

9.2 If goods become a new item due to processing of significant components, the reservation of title shall also apply to our co-ownership share in the new item.

9.3. The customer must provide adequate insurance against fire, break-in, theft, vandalism and water damage for delivery items for the duration of the reservation of title and handle and store such items with due care. The customer hereby transfers to us its claims to insurance benefits in the event of damage or loss with respect to the reserved goods, at the invoice value of the reserved goods.

9.4. The customer shall be entitled to resell or further process the delivery item in the context of its ordinary business activities, even before our claim falls due, provided payment is not late or this permission has not been revoked by us. In this case, the following provisions shall also apply:

(a) The reservation of title shall extend to products arising as a result of processing, mixing or combining of our products to the full value thereof, wherein we shall be deemed to be the manufacturer. If, in the event of processing, mixing or combining with products from third parties, their reservation of title remains intact, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined products. Moreover, the same shall apply to resulting products as in the case of products delivered under reservation of title.

(b) The customer shall assign amounts due from third parties from the selling on of goods or products, either in full or at the amount corresponding to our co-ownership share, as security pursuant to the preceding paragraph. We shall accept such assignment. The obligations on the part of the customer referred to in Clause 9.5 shall also apply with respect to the assigned debts.

(c) The customer shall still be entitled along with us to recover the respective debt. We undertake not to recover debts as long as the customer meets its payment obligations to us, does not fall into arrears with payments, does not file for insolvency and there are no other problems in terms of its ability to pay. Should this be the case, however, we may request that the customer informs us of assigned debts and the respective debtors, provides all the information necessary for their recovery, the associated documentation and notifies the debtors (third parties) of the assignment.

9.5. Goods that are subject to reservation of title may not be pledged to a third party nor as collateral prior to the payment in full of the secured debts. The customer shall notify us immediately in writing if and insofar as seizures are made by a third party with respect to goods belonging to us. The customer must take any necessary steps to prevent impairment or loss of our rights with respect to delivered items. The customer shall be obliged at our request to provide immediately all information necessary for exercising and pursuing our ownership rights. The customer shall bear the costs required for averting seizure and securing the return of goods delivered by us, in the event that intervention against the measure was successful and seizure by way of execution against the third party has failed due to costs.

9.6. In the event of conduct contrary to the terms of the contract on the part of the customer, particularly in the event of non-payment of debts due to us, we shall be entitled, in accordance with statutory provisions, to withdraw from the contract and request the return of goods based on retention of title and the cancellation of the contract. If a customer fails to pay debts due to us, we may only exercise these rights if we have previously given the customer an appropriate period in which to pay and it has not done so, or setting such a deadline is unnecessary in accordance with statutory provisions.

9.7. If the realisable value of the securities provided for us exceeds our outstanding debts by a total of more than 10%, we shall be obliged at the customer's request in this respect to release securities at our discretion; however, only fully paid deliveries need to be released from the reserved goods.

9.8. If the retention of title requires further conditions in accordance with the applicable law in the country in which the goods are located, in particular registration with an authority, the customer undertakes to fulfil these conditions at its own expense in order to guarantee the effectiveness of the retention of title. If a retention of title or similar provision of security is not possible, the customer undertakes to provide comparable security.

10. Notice of defects/Warranty

10.1. The customer shall inspect goods delivered immediately upon receipt and notify us immediately in writing in the event of a defect. Otherwise, goods shall be considered approved insofar any defect involved was identifiable in the course of a proper inspection. If a defect becomes apparent at a later date, it must be notified immediately upon discovery. A later notification of defects shall not be possible.

10.2. If a defect which is due to circumstances existing prior to the transfer of risk exists and has been notified promptly, we shall undertake and shall be entitled at our discretion to proceed within an appropriate period with subsequent performance in the form of a remedy of defects or delivery of defect-free items.

10.3. We shall be entitled to make subsequent performance due dependent upon the customer paying the outstanding purchase price. The customer shall be entitled, however, to retain part of the purchase price appropriately proportionate to the defect.

10.4. The customer shall give us the necessary time and opportunity for the subsequent performance due, in particular to hand over the goods that are the subject of a complaint for testing purposes. In the event of replacement delivery, the customer shall return the defective goods to us in accordance with statutory provisions. Subsequent performance shall not include the dismantling of the defective item nor its reinstallation if installation was not part of our original obligation.

10.5. We shall bear the costs incurred for testing and subsequent performance, in particular transport, labour and materials costs (not dismantling and installation costs), if there is an actual defect. If, however, a request by the customer for the elimination of a defect proves unjustified, we may request the reimbursement of costs incurred in this respect from the customer. Any claims for compensation over and above this Clause 10.5, particularly in relation to the reimbursement of installation and dismantling costs, shall comply with Clause 11.

10.6. If subsequent performance fails or is unreasonable for the customer, the latter shall be entitled to withdraw from the contract or to request a reduction in payment (discount). However, in the event of only a minor breach of contract, particularly in the event of only slight defects, the customer shall not be entitled to cancel the contract. We may only refuse subsequent performance if this is associated with disproportionate costs.

10.7. If we have rendered partial performance, the customer may only withdraw from the entire contract if it no longer has any interest in the partial performance. In the case of multiple deliveries, the rights on the part of the customer shall be restricted to the respective partial delivery.

10.8. Our warranty obligations with respect to plants or plant components delivered, installed and/or commissioned by us shall only apply to defects arising under ordinary operating conditions and proper use. They shall not apply to defects or damage for which the customer is responsible. The customer shall be responsible in particular for defects and damage that has arisen on account of the following:

- defective and/or incorrect installation or commissioning by the customer or a third party,
- inappropriate and/or incorrect operation and/or maintenance by the customer or a third party,
- improper operational demands (for example, exceeding of stipulated volume flows),
- inappropriate machines and equipment or
- normal wear and tear.

10.9. In the event of defects, the customer shall enjoy statutory warranty rights unless these have been excluded under the preceding clauses 10.1 to 10.8. Damages shall be paid by us only in accordance with the provisions in Clause 11.

11. Liability

11.1. Unless specified otherwise in Clauses 10, 11.3 and 11.4, customers may not make claims on account of material defects or defects in title, regardless of the reasons. We shall not be liable in this respect for damage that is not incurred by the delivery item itself. We shall not be liable in this respect in particular for lost profit or other financial loss incurred by the customer.

11.2. Unless specified otherwise in Clauses 11.3 and 11.4, customers may not make claims on account of a breach of obligation arising from the contractual relationship.

11.3. The preceding exemptions from liability (Clauses 11.1 and 11.2) shall not apply insofar as we are liable under law, for example (1) in accordance with the German Product Liability Act (Produkthaftungsgesetz), (2) on account of injury to life, limb or health, which is due to a negligent or deliberate breach of obligation by us or one of our legal representatives or vicarious agents, (3) insofar as the cause of the damage is due to deliberate intent or gross negligence by us or one of our legal representatives or vicarious agents, (4) if the customer exercises rights on account of a defect arising from a quality guarantee or a guarantee of a specific duration of quality, (5) if we deliberately breach a significant contractual obligation, the fulfilment of which enables correct execution of the contract and upon compliance with which the contracting parties may generally depend (cardinal obligation) or (6) if claims under a right of recourse in the purchase and supply chain of consumer goods (Article 478 of the BGB [German Civil Code]) are involved.

11.4. Insofar as we negligently breach a cardinal obligation, our liability for damages shall be limited to typical, foreseeable contractual damage unless there has been deliberate intent or gross negligence or we are liable on account of injury to life, limb or health.

12. Expiry by limitation

All claims made against us on account of material defects or defects in title shall expire by limitation 12 months after statutory commencement of warranty, unless the Product Liability Act or other legislation, in particular Article 438 (1) (2) of the BGB (buildings and items for buildings), Article 479 (1) of the BGB (rights of recourse in the purchase and supply chain for consumer goods) or Article 634a (1) (2) of the BGB (building defects) prescribe longer periods. The expiry by limitation of claims on account of liability for damages arising from injury to life, limb or health, which are due to a negligent or deliberate breach of obligations by us, our legal representatives or vicarious agents, shall be based on statutory provisions.

13. Applicable law, legal venue

13.1. Contracts shall be governed solely by German law. The application of the UN Sales Convention is expressly excluded.

13.2. The legal venue for any disputes arising from the commercial relationship with our customers, including complaints regarding cheques and bills of exchange, shall be solely the Court in Essen.

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