

Article 1 General – Scope

- 1 The General Terms and Conditions listed here are an integral part of the agreement. Our goods and services are always exclusively subject to these terms and conditions.
- 2 Consequently, our terms and conditions will also apply to all future business relationships, even if they will not again be expressly agreed.
- 3 Deviating General Terms and Conditions of the customer or other deviating agreements are only valid if it has been agreed expressly in writing. The customer's own terms and conditions do not apply, even if we perform without reservation in the knowledge of their existence, without declaring again our non-acceptance of them.

Article 2 Offers, Conclusion of the Agreement and Substance of the Agreement

- 1 Our offers are without obligation and only become binding, when we confirm the order in writing. The scope and manner of delivery are governed exclusively by our order confirmations. The agreement comes into being only upon our written order confirmation and in accordance with its contents or by virtue of our delivery. The documents belonging to our offer, such as illustrations, drawings, weights and dimensions, are only meant as approximations and are not binding. They are only binding, if it has been expressly agreed in writing. However, even in that case, tolerances that are customary in the trade, will be permissible.
- 2 We reserve the right of making design changes to the subject matter of the agreement during the delivery period, without prior notice, provided that that such changes are unreasonable for the principal. Technical changes, improvements and adaptations to the latest state of science and technology, improvements in design and material selection are particularly considered to be reasonable.
- 3 Assurances, secondary agreements or changes to the agreement must be made in writing in order to be valid. This requirement of written form cannot be dispensed with.
- 4 We prepare the first offer and the first project planning free of charge. Further conceptual drafts will only be prepared by us free of charge, if subsequently the delivery agreement will be legally established.

We reserve title of ownership and intellectual property rights on quotations, drawings and other documentation. Such documentation may not be made accessible to third parties. If an order does not materialise, the documentation must be forthwith returned to us.

Article 3 Delivery, Technical Condition, Partial Delivery and Passage of Risk

- 1 If deviations from the standard technical condition listed in a-c below are to be made, only our written order confirmation will be exclusively authoritative with regard to the scope of delivery and the technical condition of the machinery and components to be delivered.
 - a) The machines and conveyor units are designed for 230/400 V, or 400/690 Volt, 50 Hz. All machines are painted with a suitable paint, at our discretion. Conveyor units, silo fittings and running pipes will only have been given a primer coat. The colours are determined by us.
 - b) Our systems are designed for ambient temperatures between -5°C and +40°C, average air pressure and relative humidity of 90 %.
 - c) Protective devices are supplied by us, if prescribed by the German professional associations.

- 2 We deliver uninsured ex-factory. Partial deliveries are permissible.
- 3 The risk of accidental loss and accidental damage (deterioration) passes to the customer not later than upon dispatch of the goods, also in cases of partial delivery. This also applies if we have assumed other services, for example delivery costs or transportation and installation. Should dispatch be delayed for reasons that the customer is responsible for, the risk will already pass to the customer upon notification of readiness for dispatch.

Article 4 Delivery Period, Delay and Impossibility, Order on Call

- 1 Delivery dates or delivery periods must be laid down in writing and emanate from the written order confirmation. They may be agreed as binding or non-binding. Compliance with them presupposes that all commercial and technical questions between the parties have been clarified and that the customer has met all contractual obligations incumbent upon him, particularly with regard to making the down payment, where doing so has been agreed.
- 2 The delivery period / delivery date will have been met if, before lapsing of the delivery period / delivery date, the item to be delivered has left the factory or the customer has been notified that it is ready for dispatch.
- 3 We will not be liable for delays in delivery or performance on account of force majeure and on account events that we are not responsible for, which make delivery considerably more difficult or even impossible for us – this includes in particular strikes, lockouts, official orders etc., also if they were to occur at our suppliers or their sub-suppliers

– also if binding deadlines and dates have been agreed. Such events entitle us to postponing the delivery or the rendering of the service and for duration of the impediment, plus a reasonable recovery period. If we have not yet made deliveries and/or if our services have not yet been rendered and the events mentioned in Paragraph 1 of this Article 4 do persist for longer than three months, we will have the right of wholly or partially withdrawing from the agreement. In such a case, the customer will not be entitled to claiming compensation for damages, nor to lodging any other claims.

Nevertheless, we will have the obligation of informing the customer forthwith about such delays.

- 4 Should the customer default on acceptance or culpably infringe any other duties to cooperate, we will have the right of demanding compensation for the resulting damages, including possible extra expenses. The right of lodging additional claims or exercising additional rights remains reserved.

If these preconditions have been met, the risk of accidental loss or impairment of the goods to be delivered will pass to the customer, if he has defaulted on acceptance or payments.

- 5 If, after we should have got in default, the customer sets us a reasonable grace period with a threat of rejection, which must be done in writing, he will have the right of withdrawing from the agreement after fruitless expiry of the second grace period.

We will then be liable, if the delay that bestows the right of withdrawing from the agreement, is the result of wilful or grossly negligent infraction of the agreement on our part. If the delay in delivery is the result of wilful or grossly negligent infraction of the agreement on our part, our liability in terms of paying compensation is limited to the damage that is foreseeable and may typically be expected. In that case, our liability is nevertheless limited to 20 % of the nominal amount of the agreement. The limit does not apply in cases of wilfulness, gross negligence, death, bodily injuries or impairment of health.

Article 5 Prices and Payment Conditions

- 1 Except where stated otherwise in the order confirmation, our prices are net ex-factory Nieheim, excluding packaging, freight and forwarding costs. The latter will be charged separately.
- 2 Particularly not included in the prices are the costs of all structural measures, such as chiselling work, casting of the machines and parts supplied and installation of the electrical cabling of the systems.
- 3 The prices agreed at the time of conclusion of the agreement (order confirmation) are determinant. These are always based on the prevailing cost factors.

We reserve the right of changing our prices accordingly if costs decrease or increase after conclusion of the agreement, especially as the result of collective labour agreements and/or changes of materials. Upon request, we will provide the customer with evidence. The legal value-added tax is not included in our prices; it will be shown separately on the invoice at the legal rate that prevails at the time of raising it.

- 4 Special written agreement is required for applying discounts.
- 5 Delays in payments will be dealt with in accordance with the relevant legal stipulations:
 - a) 30 % upon receipt of the order confirmation
 - b) 60 % upon notification of readiness for dispatch
(payment to be received before delivery)
 - c) 10 % after delivery and commissioning

Payment of the relevant portion is always due within ten days from invoice date.

- 6 The customer is only entitled to offsetting, if his counterclaims have been legally established, are not disputed or have been recognised by us. Moreover, a withholding right may only be exercised by the customer, if his counterclaim emanates from the same contractual relationship.
- 7 We have the right of demanding a bank guaranty from the customer, fully covering the amount of the order. We will reimburse the usual costs of such a surety. If the customer does not put up the surety within ten days from having been requested to do so, we will have the right of refusing to perform. Delays in payments will be dealt with in accordance with the relevant legal stipulations.

Article 6 Reservation of Title

- 1 We reserve title of ownership of the purchased matter until all payments emanating from the business relationship with the customer have been received. For cases where the customer acts in contravention of the stipulations of the agreement, especially when he defaults on payments, we reserve the right of repossessing the purchased matter. Repossession of the purchased matter by us amounts to a withdrawal from the agreement. After repossessing the purchased matter, we are entitled to selling it, whilst the proceeds must be written towards the obligations of the customer – subject to deduction of reasonable related expenditure.
- 2 The customer has the obligation of taking good care of the purchased goods; he does particularly have the obligation of taking out, at his own expense, an insurance policy against damage from fire, water and theft, where the insured sum must be sufficiently high for covering the acquisition value. Where service and inspection work is required,

the customer must carry it out in good time, at his own expense.

- 3 In the event that third parties place liens or take other actions, the customer must notify us forthwith in writing, to enable us to take action in accordance with Article 771, ZPO (Zivilprozessordnung [Code of Civil Procedure]). Should the third party not be able to defray our legal and out-of-court costs as in respect of in accordance with Article 771, ZPO, the customer will be liable for the ensuing shortfall.
- 4 The customer has the right of selling the purchased matter within the normal course of business; however, he will already now cede to us all its receivables up to the final invoice amount of our claim (including VAT) that he may become entitled to receive from his customer or third parties on account of selling to them, regardless of whether the purchased matter has been sold without processing or after processing. The customer remains entitled to collecting under the claim, also after it has been ceded. This has no impact on our own right of collecting under the claim. However, we commit ourselves to not collecting under the claim for as long as the customer honours his payment obligations emanating from the secured proceeds, no event of default occurs and, particularly, does not request the instigation of conciliation, bankruptcy / insolvency proceedings and payments are not suspended. However, should that be the case, we may demand for the customer to disclose to us all ceded claims and the names of the concomitant debtors, to provide us with all information that is necessary for collecting under the claims, to submit to us all appurtenant documentation and to notify the debtors (third parties) of the cession.
- 5 Processing of or transforming the purchased matter by the customer is always done on our behalf. If, for processing of the purchased matter, objects are used that do not belong to us, we acquire co-ownership in the new object in proportion to the value of the purchased matter (final invoice amount including VAT) in terms of the other processed objects at the time of processing. The same applies to the matter that is created through processing as to the purchased matter that was delivered subject to title.
- 6 If the purchased matter is mixed with objects that do not belong to us, in a way that they cannot be separated, we acquire co-ownership in the new object in proportion to the value of the purchased matter (final invoice amount including VAT) in terms of the other mixed objects at the time of processing. If the mixing is done in a way that the goods belonging to the customer can be considered to be the main object, it is considered to have been agreed that the customer will transfer proportional co-ownership to us. The customer will hold the sole ownership or co-ownership that has come about in that way, on our behalf.
- 7 The customer does also cede to us the claim for securing our claim against him, which has arisen

against a third party as a result of linking the purchased matter with real estate property.

- 8 We commit ourselves to releasing upon the request of the customer the collateral that we are entitled to, to the extent that the realisable value of our collateral exceeds value of the claims that it secures by more than 10 %; the choice of the collateral to be released is at our discretion.

Article 7 Liability for Deficiencies

- 1 The quality of the goods emanates exclusively from the contractual agreements with our customer, meaning on the basis of our written order confirmation.
- 2 Precondition for the lodging claims by the customer is that he must have correctly honoured its inspection and notification obligations as per Articles 377 and 381, HGB (Handelsgesetzbuch [Commercial Code]), meaning that he must have notified us forthwith of the deficiencies.
- 3 If the customer reports a deficiency, he must immediately enable us to view and inspect the delivered goods. If we or our agent are not given that possibility, any claims concerning the relevant deficiencies will be null and void.
- 4 All parts that prove to be defective as a result of a circumstance occurring before the transfer of risk, will be repaired or replaced free of charge, at our discretion. The customer is obliged to inform us forthwith in writing of such deficiencies. Replaced parts become our property.
- 5 No liability will be accepted for deficiencies that have arisen for the following reasons:
 - unsuitable or improper use,
 - incorrect mounting or commissioning by the customer or by third parties,
 - subsequent wear and tear,
 - erroneous or negligent handling, especially excessively processing unsuitable materials,
 - unsuitable operating agents, substitute materials,
 - deficient building work and/or deficient foundations.

We do not accept liability, if the wrong lubricants are used or if the prescribed lubrication intervals are not complied with. Reported deficiencies do not give us the right to withholding the services owed by us, if the customer is obliged to make advance payments.

- 6 We accept no liability if the customer himself carries out or has carried out by third parties improper supplementary performance, modification or repair work on the delivered goods.
- 7 The customer is obliged to give us the necessary time and opportunity to carry out all repair work and replacement deliveries that we deem neces-

sary, at our reasonable discretion. Else, we will be released from all claims for deficiencies and for compensation for damages.

- 8 The period of limitation for lodging claims for deficiencies is 12 months, starting from the passage of risk.

Article 8 Claims for Compensation for Damages

- 1 Claims for compensation for damages and for reimbursement of expenditure of the customer, on whatever legal grounds, in particular those due to breach of duties arising from the contractual obligation and from improper handling, are excluded.

This does not apply in cases of mandatory liability, for example under the Produkthaftungsgesetz [Product Liability Act], in cases of wilfulness, gross negligence, death, bodily injuries or impairment of health or breach of essential contractual obligations.

Slight, negligently caused indirect consequential damage caused by a deficiency is also excluded. It does not apply in the event of a breach of major obligations (cardinal obligations) and in cases of death, bodily injuries or impairment of health.

- 2 However, claims for compensation of damage on account of infraction of essential contractual obligations are restricted to unforeseeable damage that is typical for the kind of agreement, provided there is no liability on account of wilfulness, gross negligence, death, bodily injuries or impairment of health. The arrangements above do not amount to a change in the burden of proof to the disadvantage of the customer.
- 3 Claims for damages in accordance with the stipulations mentioned above that the customer may be entitled to, are subject to the statute of limitations upon expiry of the limitation periods applicable to the claims for material defects. The statutory periods of limitation apply to claims for compensation for damages under the Product Liability Act.
- 4 Our liability is limited to 20 % of the nominal amount of the agreement. That limit does not apply in cases of wilfulness, gross negligence, death, bodily injuries or impairment of health.

Article 9 Mounting

In the case of versions that require assembling, the customer is responsible for the electrical installation work and the laying of water inlets and outlets. Any masonry, concrete, breakage, pouring and plastering work that may be required, must also be carried out by the customer.

Article 10 Period of Limitation

All claims of the customer, for any reason whatsoever, are subject to a period of limitation of twelve months from passage of risk.

Article 11 Lump Sum Claim for Damages

If the customer cancels an order without justification, we can demand 15 % of the agreed price for the costs incurred by processing the order and foregone profit, without prejudice to the possibility of lodging a claim in excess of the actual amount. The burden of proving that the amount of loss was lower, rests upon the customer.

Article 12 Fulfilment Location and Jurisdiction

- 1 If the customer is a merchant, jurisdiction will be vested in the courts of our statutory seat.
- 2 Except where stated otherwise in the order confirmation, the location of our statutory seat is the fulfilment location.
- 3 The mutual legal relationship is governed by the laws of the Federal Republic of Germany, under exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

If a stipulation in these General Terms and Conditions or a stipulation within the framework of other agreements should be or become void, the validity of the other stipulations or agreements will not be affected.

The unenforceable stipulation must be replaced by an enforceable stipulation that most closely resembles the economic purpose of the unenforceable stipulation.



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