

General Terms and Conditions of Sale and Delivery

1 Application

1.1. The General Terms and Conditions of Sale and Delivery of GÜNTHER Heisskanaltechnik GmbH (hereinafter referred to as "GÜNTHER") apply exclusively. Any terms and conditions of GÜNTHER's contractual partner (hereinafter called "Customer") which contradict or differ from these Terms and Conditions of Sale and Delivery shall not be recognised unless GÜNTHER has given express consent in writing that divergent conditions may apply. These Terms and Conditions of Sale and Delivery shall also apply where GÜNTHER delivers to the Customer, without reservation, in the knowledge that the Customer's conditions of sale and delivery contradict or differ from its own terms and conditions.

1.2 These Terms and Conditions of Sale and Delivery shall also apply to all future transactions with the Customer, even if they are not separately agreed upon again.

1.3 These Terms and Conditions of Sale and Delivery shall only apply to entrepreneurs (Section 14 BGB (German Civil Code)), legal entities under public law and public-law special assets.

2 Offer and Conclusion of a Contract

2.1 All offers made by GÜNTHER are subject to change and are non-binding, unless they have been expressly identified as binding. GÜNTHER reserves the right to cancel an item, suspend delivery or make price changes. The scope of GÜNTHER's delivery obligations shall be determined by its acknowledgement of the order or by the purchase contract concluded in writing, including these General Terms and Conditions of Sale and Delivery. Verbal assurances given by GÜNTHER prior to the conclusion of this contract shall not be legally binding, and verbal agreements made between the contracting parties shall be superseded by the written contract, except where it is evident from the respective agreements that they continue to bindingly apply.

2.2 The contract shall be deemed concluded if, within a period of four weeks, GÜNTHER confirms in text form its acceptance of the order. Receipt of the order at GÜNTHER shall be decisive for the commencement of this period. GÜNTHER shall inform the Customer without delay if it does not accept the order. The contract shall come into being at the latest when the ordered goods are dispatched or, in the case of part deliveries, when the initial delivery is dispatched.

2.3 The documents, drawings, weights and measurements, samples etc. are only approximations and shall not represent guaranteed characteristics. GÜNTHER shall be entitled to depart from the specifications contained in the offer and/or the acknowledgement of the order provided that such departures are not of a fundamental or essential nature and do not impede the purpose of the contract.

2.4 Insofar as GÜNTHER manufactures parts in accordance with the Customer's drawings, the drawings produced by GÜNTHER and approved by the Customer shall prevail. Departures from the approved drawings must be agreed separately and any additional costs incurred in this respect must be reimbursed.

3 Intellectual Property Rights

3.1 GÜNTHER shall retain title and copyright to all illustrations, drawings, calculations and other documents.

This shall apply in particular with respect to any written documents marked "confidential". The Customer may only disclose them to third parties with the prior written consent of GÜNTHER.

3.2 All illustrations, drawings, calculations and other documents must be returned to GÜNTHER immediately upon first request if a contractual relationship does not come into being, or the contractual relationship discontinues for some other reason. Any copies made shall be destroyed. This shall also apply with respect to the offer documentation itself.

3.3 Where deliveries are made in accordance with drawings or other information from the Customer, and this infringes third-party intellectual property rights, the Customer shall indemnify GÜNTHER from all claims within the contractual relationship.

4 Delivery/Delivery Date/Default

4.1 Delivery periods and delivery dates shall only be regarded as binding where they have been expressly guaranteed as a set period or date in the acknowledgement of the order or in the written purchase contract. GÜNTHER shall not be bound by the delivery date or delivery period where the Customer fails to comply with its obligations (payment of instalments, production of the necessary documentation, etc.) within the agreed time limit. We reserve the right to plead non-performance of the contract.

4.2 Delivery periods shall commence no earlier than on the day when the contract is concluded in writing, i.e. upon the signing of the acknowledgement of the order. Commencement presupposes clarification of all technical questions.

4.3 In the case of subsequent change requests by the Customer, GÜNTHER shall be released from the obligation to comply with the delivery date or delivery period.

4.4 The delivery period shall have been met if the subject matter of the delivery leaves GÜNTHER's works, or GÜNTHER gives notification of readiness for delivery, prior to expiry of the said delivery period.

4.5 GÜNTHER shall not be liable for impossibility of delivery or for delays in delivery where these have been caused by force majeure or other events that were unforeseeable at the time of the conclusion of the contract (e.g. operational disruptions of any kind, transportation delays or non-delivery, incorrect delivery or late delivery by suppliers) and are not attributable to GÜNTHER. In this case, the agreed delivery date or delivery period shall be postponed for the duration of the circumstances preventing delivery. If GÜNTHER defaults on delivery or performance, or it becomes impossible for GÜNTHER to deliver or perform, GÜNTHER's liability for damages shall be limited as set out in Section 8 of these General Terms and Conditions of Sale and Delivery.

4.6 Returns of flawless goods are only permitted with the prior express agreement of GÜNTHER. Parts from the current delivery schedule so returned must be in their original packing and in perfect, saleable condition. The return shipment shall be sent carriage paid and at the sender's risk and subject to a 15% restocking charge. Processing fees shall be charged according to the work required. This may, for instance, be re-coding, cleaning and repackaging.

4.7 If the Customer defaults on acceptance or breaches other duties to cooperate, GÜNTHER shall be entitled to claim compensation for the loss incurred as a result, including any additional expenditure. GÜNTHER shall also

be entitled to set a reasonable time limit for acceptance by the Customer and where this expires without result, to cancel the contract and claim damages in lieu of performance.

5 Transfer of Risk/Packaging

5.1 The risk of accidental loss or accidental deterioration of the goods supplied shall pass to the Customer no later than upon the hand-over of the goods to the shipping agent, the carrier or any other third party designated for carrying out the shipment, or upon the despatch of the goods to the Customer (in which case the commencement of the loading process shall be decisive), even where part deliveries that are expressly permissible are carried out, provided that timely complete delivery of the entire goods ordered is impossible for reasons for which GÜNTHER bears no responsibility.

5.2 Delivery shall be "ex works". GÜNTHER shall only be obliged to insure the goods at its own expense against insurable risks where the Customer expressly requests this.

5.3 Transport packaging and any other packaging under the VerpackV (Packaging Ordinance), with the exception of pallets, will not be taken back. The Customer shall be obliged to arrange for disposal of the packaging at its own expense.

6 Prices and Payment

6.1 In the absence of a separate agreement, prices shall always be ex-works including loading at the works but excluding packaging which shall be charged separately.

6.2 The specified prices shall be net; statutory value added tax shall be added at the rate applicable on the date of the invoice and be separately indicated.

6.3 In the absence of a separate agreement, accounts receivables arising from this contract shall be payable pro rata as follows:

Payment must be made within 14 days of the invoice date without deduction. Receipt at GÜNTHER shall be decisive for the date of payment. A discount for prompt payment shall be deemed agreed only where expressly confirmed by GÜNTHER in writing.

6.4 GÜNTHER shall be entitled to initially allocate payment made by the Customer to the oldest untitled debt even in the event of conflicting appropriation. Where costs or interest have already accrued, GÜNTHER shall be entitled to allocate payments against the costs first, then the interest and finally the main debt.

6.5 The Customer shall only be entitled to set off if and insofar as its counter-claims have been recognised by a declaratory judgement, are undisputed or have been accepted by GÜNTHER in writing. The Customer's right of retention shall be limited to claims arising from the contractual relationship.

6.6 GÜNTHER is entitled to demand default interest of 9 % above the respective base interest rate in accordance with Sections 288 (2) and 247 BGB (German Civil Code).

7 Reservation of Title

7.1 GÜNTHER reserves title to all parts supplied until receipt of all payments under the delivery contract, including future payments. In the event of conduct contrary to the contract, in particular default in payment, GÜNTHER shall be entitled to rescind the purchase contract and repossess the purchased item.

7.2 The Customer must handle the delivered parts with due care and, while they are subject to the reservation of title, insure them at its own expense against all forms of loss at their replacement value.

7.3 The cost of maintenance and inspection work while the goods are subject to the reservation of title must also be borne by the Customer, even if such work is carried out by GÜNTHER.

7.4 In the event of seizure or other intervention by a third party, the Customer must inform GÜNTHER immediately in writing so that the latter can bring an action to oppose execution of a judgement. Insofar as the third party is not in a position to reimburse the judicial and extra-judicial costs of such an action, the Customer shall be liable for them.

7.5 The Customer shall be entitled to resell the purchased items in the ordinary course of business. However, it hereby assigns to GÜNTHER all debts, up to the amount of GÜNTHER's final invoice (including value added tax), accruing to it as a result of the resale from its customer or a third party, irrespective of whether or not the item had been processed prior to resale. The Customer shall retain the right to recover such debts even after delivery. GÜNTHER's own authorisation to recover the debt shall remain unaffected. However, GÜNTHER undertakes not to recover the debt provided the Customer settles its payment obligations out of the proceeds collected, does not default on payment and, in particular, provided that no application is made to institute insolvency proceedings and that there has been no suspension of payments.

7.6 In the event that the goods supplied have been irrevocably mixed or combined with other items which are not the property of GÜNTHER, GÜNTHER shall acquire joint ownership of the new or connected item in the proportion of the value of the goods supplied (final invoice amount including value added tax) to the other items at the time of the mixing or combining. The Customer shall hold the resulting rights of sole or joint ownership on GÜNTHER's behalf.

7.7 Payment of part of the cost of tools shall not entitle the Customer to acquire any rights to such tools; they shall remain the sole property of GÜNTHER.

8 Liability for Material Defects/General Liability

8.1 GÜNTHER shall not be liable for loss arising due to improper handling, wear and tear, storage or other actions on the part of the Customer or third parties.

8.2 Normal wear and tear on the goods, in particular due to treatment of filled thermoplastics or due to chemical effects of the thermoplastics to be treated, shall not constitute a material defect.

8.3 The Customer shall use the goods in accordance with GÜNTHER's recommendations and applicable statutory provisions and requirements. In particular, therefore, GÜNTHER shall not be liable for incorrect operation during installation, conversion or disassembly or for unauthorized opening of manifolds, controllers or nozzles, in particular such with thick-film heaters.

8.4 Statutory claims arising from liability for material defects shall, as a rule, be subject to a limitation period of one year from the date of hand-over of the goods. This period shall not apply in cases under Section 438 (1), no. 2 BGB (German Civil Code) or Section 634a (1), no. 2 BGB or in cases of fraudulent concealment of a defect. Nor shall the period apply to damage claims of the Customer on the basis of mortal injury, physical injury or health damage or on the basis of intentional or grossly negligent breaches of duty on the part of GÜNTHER or its authorised agents, which shall become statute-barred in accordance with the statutory provisions in each case. This shall not amount to a guarantee of durability.

8.5 The Customer undertakes to comply with its duty to examine the goods pursuant to Section 377 HGB (German Commercial Code) even if the goods are resold.

8.6 In the context of supplementary performance, GÜNTHER shall have the right to choose between subsequent repair and new delivery.

8.6.1 If GÜNTHER is obliged to render subsequent performance, GÜNTHER may freely choose between disassembling and installing the defective item itself and reimbursing the Customer for the cost of disassembly and installation. GÜNTHER shall be liable for carrying out the disassembly and installation and for reimbursing the cost of disassembly and installation only in the event of a culpable breach of duty.

8.6.2 The essential costs involved in subsequent performance shall not be borne by GÜNTHER insofar as such costs are increased due to the fact that, following delivery, the goods are taken to another location away from the Customer's commercial office or are installed at the end customer's. This shall not apply if such removal is consistent with the intended use of the item.

8.7 The Customer's right of recourse against GÜNTHER due to claims resulting from liability for material defects which are brought against the Customer by its own customers shall be excluded if the Customer has not complied with its duty to examine the goods and give notice of defects, or if the goods have been changed by processing.

8.8 GÜNTHER rules out all liability on its part for loss, except where a guarantee of specific qualities has been given, or a defect has been fraudulently concealed. This exclusion of liability shall not apply to damage claims of any kind where GÜNTHER, its statutory representative or its authorised agents have breached their duties by gross negligence or with wrongful intent, or to damage claims in cases of mortal injury, physical injury or health damage. Insofar as a breach of duty attributable to GÜNTHER is due to ordinary negligence, and a material contractual duty has been culpably breached, the liability for damages shall be limited to foreseeable loss that is typical of this type of contract and typically occurs in comparable cases. Material contractual duties encompass the obligation to deliver the delivery item in due time and free from defects in title and material defects that impair its functionality or its fitness for use more than merely insignificantly, as well as duties to advise, protect and exercise proper care which have the purpose of protecting the life and limb of the Customer's personnel or protecting the Customer's property against considerable loss or damage. In all other respects, liability is ruled out.

8.9 Liability under the provisions of the Produkthaftungsgesetz (Product Liability Act) shall remain unaffected.

8.10 No change in the burden of proof to the detriment of the Customer shall be associated with the above provisions.

9 Ban on Assignment

All claims of the Customer against GÜNTHER arising from the contractual relationship shall be non-assignable.

10 Product Liability

10.1 The Customer may only use the goods for the intended purpose and must ensure that these goods are only resold to persons who are familiar with the dangers and risks of the product.

10.2 If the Customer uses the product as a base material or a sub-product of its own products, it shall also be obliged to comply with its duty to provide a warning with respect to the products supplied by GÜNTHER when placing the end product on the market. With respect to their internal relationship, the Customer shall indemnify GÜNTHER, at the first request, against claims arising from a breach of these obligations.

11 Other Matters/Concluding Provisions

11.1 The place of performance shall be Frankenberg (Eder).

11.2 The place of jurisdiction for all disputes arising from the contract is Frankenberg (Eder). However, GÜNTHER shall be entitled to also bring an action against the Customer at the court seat where the Customer has its general place of jurisdiction or at the court seat where the Customer has a branch establishment.

11.3 German law shall apply exclusively with the exception of the United Nations Convention on the International Sale of Goods (CISG).

11.4 If any individual provisions of the contract are invalid, the validity of the remaining provisions shall not be affected thereby. The parties shall endeavour to replace the invalid provision with a valid one which corresponds most closely to the economic purpose of the contract.

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