

General terms of sale of ALLIGATOR Ventilfabrik GmbH

I. General terms

1.

Only the following terms of sale, in the version valid at the time the delivery or service is provided, apply to our deliveries and services and all current and future business relationships with companies within the meaning of section 14 BGB (German Civil Code).

2.

Deviating, contradicting or supplementary General terms and conditions shall not form part of the contract, unless their application is expressly acknowledged by us in writing. Verbal agreements made by our representatives and staff as well as other agreements, including amendments of these terms of sale are only effective following prior written acknowledgement.

II. Conclusion of agreement and performance description

1.

Our offers are always subject to confirmation. An agreement is concluded by our written acknowledgement of the order.

2.

On placement of the order the contract partner firmly declares its intention of wanting to purchase the goods ordered. We are entitled to accept the offer to conclude an agreement, inherent in the order placement, within two weeks after receipt of the order. Acceptance is acknowledged in writing.

3.

The provision of catalogues, brochures, price lists and circulars is not to be considered an offer.

4.

The contract is concluded under the suspensive condition of us being correctly and timely supplied by our suppliers. We shall immediately inform the contract partner if a service is not available and reimburse the corresponding counterperformance immediately in the event that the contract partner withdraws from the contract.

5.

With regard to on-call orders we are entitled to procure the material for the entire delivery and to immediately manufacture the entire delivery. Alteration requests by the contract partner can therefore not be taken into consideration once the contract has been concluded.

6.

The quality of the goods to be delivered is described by the expressly agreed characteristics. Liability for defects in respect of a specific purpose or a specific suitability is only accepted if this was expressly agreed in writing. We retain the right to usual or technically unavoidable deviations of form, colour, weight, mass and similar, within reason.

III. Tools/Equipment

1.

If tools or equipment are produced by us or under our direction, we will invoice prorated tool costs for this.

2.

In view of our design and construction efforts, these tools or this equipment shall remain our exclusive property.

IV. Prices

1.

The purchase price listed in our offers is valid for a period of 30 days from the date the offer is established. The decisive criterion in respect of the purchase price is the price listed in euro plus the respective amount of value-added tax.

2.

If not stated otherwise, our prices are always ex works excluding packaging, freight and customs. In addition, other deliveries and services, such as amendments initiated by the contract partner, are invoiced separately.

3.

If wage, material or energy costs alter significantly, every contractual party is entitled to demand an appropriate adjustment of the price, taking into consideration the change in circumstances.

V. Delivery

1.

Insofar as nothing to the contrary has been agreed, we deliver ex works.

2.

The delivery dates provided by us are approximate dates and are not legally binding. Firm dates must be confirmed by us in writing. A term of delivery is considered met if the object of delivery has left our store by the time this term expires or if the contract partner has received notification of readiness for dispatch within this period. A term of delivery does not commence unless all execution details have been clarified and all other conditions to be met by the contract partner have been fulfilled.

3.

Partial deliveries and services are permitted, to the extent common in trade. Partial deliveries and services are not permitted only if they are unacceptable to the contract partner.

4.

If a non-binding delivery date is exceeded by more than six weeks, the contract partner is entitled to request in writing that we provide delivery within an appropriate period. If the delivery is not provided within the period of grace, the contract partner can withdraw from the agreement by means of a written declaration. The contract partner can only demand payment of damages caused by the delay or compensation for non-fulfilment, if the delay is due to a deliberate or grossly negligent breach of duty.

5.

The fulfilment of our obligation to deliver requires the timely and proper fulfilment of the contractual duties of the contract partner, in particular the obligation to pay.

6.

If the delivery is delayed on request of the contract partner, the contract partner must pay the resultant costs.

7.

Delays in delivery and performance due to force majeure or other unforeseeable events, which considerably hamper delivery or render delivery impossible and are not due to us, entitle us to defer delivery by the period of the interference plus an appropriate start-up time or to withdraw from the agreement either completely or in part, if it has not been fulfilled.

8.

Over- or underdeliveries, in which unit numbers deviate up to 5% upwards or downwards from the amount ordered are permissible. The price is then based on the volume of goods actually delivered.

9. ALLIGATOR assumes no liability for differences in quantities of plus or minus 2% by weighing.

VI. Payments

1.

Payments are due on the agreed dates or within 30 days from the invoice date, without deductions.

2.

The contract partner is immediately in default on expiry of the payment period, without requiring a separate reminder. In the default period the debt shall attract interest at a rate of 8% above the basic interest rate, while we reserve the right to prove higher damages caused by the default and to demand this. This does not affect any further claims resulting from the default.

3.

In the event of default we can discontinue the fulfilment of our contractual obligations until receipt of payment, following written notification of the contract partner.

4.

If, after concluding the contract, circumstances which cause the creditworthiness of the contract partner to be reduced, we are entitled to refuse the provision of our services and to provide the contract partner with an appropriate period during which it must match payment with delivery or provide securities. If the contract partner refuses to do this or if the period expires without any effect, we are entitled to withdraw from the contract and claim damages due to non-fulfilment.

5.

The contract partner is not entitled to retain the purchase price due to counterclaims not arising from this contractual relationship. The contract partner may only offset payments in the event of undisputed or legally validated claims.

VII. Retention of title

1.

We retain ownership in the goods until all claims from the current business relationship are fully met. If the account is still open the retained property serves to secure our demand for payment.

2.

The processing of goods that are subject to the retention of title is effected on our behalf and on commission by us without having to enter into any commitments. If the goods are processed with an item that is not our property, we acquire co-ownership of the new item at a ratio of the value of the item supplied by us to the other processed items. Processed goods or co-ownership shares in these are considered goods that are subject to the retention of title. If the goods supplied by us are mixed or combined with other items, the contract partner shall already assign its ownership or co-ownership shares in the mixed or new items; we shall accept this assignment.

3.

The contract partner is entitled to dispose of the goods through ordinary business activities. The contract partner shall already now assign all claims to the amount of the invoice total to us that arise through the disposal of the goods to a third party. We shall accept the assignment. Following the assignment, the contract partner is still entitled to collect the debt. However, we reserve the right to collect the debt ourselves as soon as the contract partner does not properly meet its payment obligations and defaults. In this case we shall revoke the authority of the contract partner to collect the debt. The contract partner must, following our first written request, provide us with the name of the debtors of the assigned debts and advise the debtors of the assignment.

VIII. Liability for defects

1.

If nothing else has been agreed we are liable for defects in accordance with the legal provisions.

2.

If the goods are defective, we will initially provide either an amendment or a replacement, subject to our sole discretion. The expenses for amendment shall be borne by the contract partner if the costs increase due to the fact that the deliveries or services are made to a site other than the branch of the contract partner, unless this was agreed in the contract. If three attempts at amendment fail, the contract partner can either demand a reduction in payment of a rescission of the agreement. If the infringement of the contract is only minor, in particular in the event of only minor defects, the contract partner may, however, not rescind from the agreement.

3.

The contract partner must provide written notification of obvious defects immediately and within a week after receipt of the goods at their destination, at the latest, and of hidden defects immediately, however, again, at the latest within a week after detection. If not, the assertion of claims for defects is excluded. Timely sending of the notification is sufficient to keep within the term. The contract partners have the full burden of proof in respect of all qualifying conditions, in particular with regard to the defect itself, the time of detection of the defect and the timeliness of the notice of defects.

4.

The warranty period is one year from delivery of the goods.

5.

We do not grant guarantees.

6.

Processing must be discontinued immediately on detection of defects.

IX. Restriction of liability and trademark infringements

1.

With regard to slightly negligent infringements of obligations, our liability is restricted to the direct average type of damage, foreseeable with regard to the type of goods. This applies also to slightly negligent infringements of obligations of our legal representatives or agents.

2.

The above restrictions of liability do not relate to customer claims from product liability. In addition, the restrictions of liability do not apply in respect of physical damage or damage to the health or loss of life of the customer due to us.

3.

If the even that a third party asserts a claim as the delivered object infringes upon a legal trademark of a third party, the contract partner shall be liable for the infringement of the trademark insofar as we produced the delivered objects in accordance with drawings, models or other descriptions or information supplied by the contract partner. In this case the contract partner undertakes to exempt us from third-party claims and all resultant costs and expenses on first request. In addition, the contract partner undertakes to inform us immediately of any possible or claimed trademark infringements.

X. Secrecy

1.

The contract partner undertakes to treat all commercial and technical information gained during the business relationship that is not publicly known as business secrets.

2.

Drawings, models, templates, samples, patterns and similar may not be made available to unauthorised third parties. Reproduction is only permitted within the context of operational needs and copyright provisions.

XI. Data protection

We are entitled to process data on the contract partner gained in the context of the business relationship, within the meaning of the Data Protection Act, irrespective of whether this data was obtained from the contract partner or from third parties. This note replaces the notice in accordance with the Federal Data Protection Act which states that personal data on the contract partner is stored and processed via EDP.

XII. Foreign customers

For deliveries and services to foreign customers it is expressly stipulated that, in the case of failure to pay on the due date by the customer, all costs of bringing an action by the supplier in terms of both court and out of court costs shall be borne by the contractual partner.

XIII. Other provisions

1.

Place of performance and jurisdiction is our company headquarters in Giengen an der Brenz. Irrespective of this, we are also entitled to bring action against the contract partner at any other permissible place of jurisdiction.

2.

Only German legislation under exclusion of international civil law applies to the contractual relationship. The provisions of the UN CISG do not apply.

3.

The language of the contract is German.

4.

We shall be entitled to assign our receivables from deliveries and services.

5.

If individual provisions of the agreement with the contract partner including these terms of sale are or become totally or partially ineffective, this shall not affect the validity of the remaining provisions. In this case the contracting parties undertake to replace the ineffective provision by a provision, the economic success of which comes as close as possible to that of the ineffective provision.

ALLIGATOR Ventilfabrik GmbH

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