

General Terms and Conditions of Sale and Delivery



I. General provisions

- ¹In contractual relations with entrepreneurs within the meaning of Section 14 of the Civil Law Code (BGB), legal persons under public law and special funds under public law, these General Terms and Conditions of Sale and Delivery of COLUMBUS MCKINNON Engineered Products GmbH (supplier) shall apply exclusively. ²Contrary or differing terms shall not apply unless expressly agreed upon in writing; this shall apply even if the supplier accepts an order unconditionally or makes delivery unconditionally in spite of being aware of the customer's contradictory or deviating terms and conditions.
- ¹All agreements to be concluded with the customer must be in writing. ²If the order constitutes an offer within the meaning of Section 145 BGB it can be accepted within two weeks. ³Reasonable part performances by the supplier are admissible.
- ¹The supplier reserves property rights and copyright in illustrations, drawings, samples, quotes for costs and any other documents and information of a physical and non-physical nature, including in electronic format. ²They may not be made available to third parties without express written consent.

II. Pricing and payment

- ¹In the absence of any contrary written agreement the prices apply – exclusive of the statutory VAT at the date of invoicing – ex work including loading, however exclusive of packaging, insurance, unloading and costs of freight and assembly. ²The costs of acceptance and of materials provided for testing at the customer are not included in the prices.
- ¹Invoices are immediately due for payment. ²Discounts for prompt payment shall require an express agreement in writing. ³The respective statutory provisions shall apply to payment default by the customer.
- ¹If the customer is in payment default, the supplier is entitled to demand advance payment and to retain goods not yet delivered or services not yet provided. ²If the claim for payment is jeopardised by the customer's inability to perform, the supplier is entitled to request an appropriate advance payment or and appropriate security. ³Agreed delivery delays shall be extended correspondingly. ⁴After unsuccessful expiry of a time-limit pursuant to sentence 2 the supplier is entitled to revoke the contract.
- ¹The customer shall be entitled to set-off only to the extent that his counter-claims are uncontested or have been finally and non-appealably established or acknowledged by the supplier. ²The customer shall be entitled to exercise a right of retention only to the extent that the counter-claim is based on the same contractual relation.

III. Time of delivery, late delivery

- ¹Delivery shall only be due if all commercial and technical issues have been settled and if all obligations incumbent on the customer up to this stage have been complied with. ²In all other respects, the defence based on non-performance of the contract is reserved.
- ¹Observance of the time of delivery is conditional on the delivery by sub-suppliers, unless the supplier is responsible for the failure to obtain delivery. ²If the failure to observe the time of delivery is due to force majeure, labour conflicts or other causes beyond of the sphere of responsibility of the supplier, the time of delivery shall be extended appropriately.
- ¹Unless otherwise agreed in writing, the time of delivery shall be observed upon timely notice by the supplier to the customer that the goods are ready for dispatch. ²If formal acceptance has been agreed, the notice that the goods are ready for acceptance shall be decisive.
- ¹If the customer is in default of acceptance or culpably infringes any other duties of cooperation the risk of accidental destruction or accidental deterioration of the contractual goods passes to the customer. ²Furthermore, the customer shall be obliged to indemnify the supplier for any damage incurred, including any extra expenses. ³The supplier reserves the right to assert any further claims or rights.
- ¹The customer is entitled to revoke the contract without notice if the supplier is definitively unable to provide the entire performance prior to the passing of risk. ²In addition the customer is entitled to revoke the contract if performance of a part of a delivery under an order becomes impossible and if the customer has a legitimate interest in rejecting the partial performance. ³If that is not the case, the customer is obliged to pay the portion of the contractual price corresponding to the partial performance. ⁴The same shall apply to the inability of the supplier. ⁵In all other respects Section VII (Liability) shall apply. ⁶If the impossibility or inability of performance occurs while the customer is in default of acceptance or if the customer is solely or mainly responsible for these circumstances, the customer shall remain obliged to provide the required consideration.
- ¹If the supplier is in culpable default of performance, the customer shall be entitled to indemnification amounting to 0.5 % per completed week, however limited in total to 5 % of the contract price for the part of the delivery which was not delivered in time or which could not be used in the contractually intended manner due to the delay. ²The customer shall only have further claims if the default is due to intentional or grossly negligent conduct on the part of the supplier, if the parties have agreed specifically on a fixed date for delivery. ³In all other cases, in which the liability of the supplier exceeds the level of compensation stipulated in Sentence 1, the supplier's liability is limited pursuant to Section VII (Liability).
- Within the scope of the statutory provisions, the customer shall only be entitled to revoke the contract for a late performance if the supplier is in default.

IV. Passing of risk, acceptance

- ¹Unless otherwise agreed in writing, delivery is made ex works and at the risk of the customer. ²If the supplier ships the sold goods at the request of the customer to any other place than the place of performance pursuant to Section 447 BGB, the risk of accidental destruction or deterioration of the contractual goods passes to the customer, even if the supplier has agreed to bear the shipping costs. ³In the absence of written instructions by the customer, the supplier is at liberty to choose the manner and means of shipping. ⁴Transport insurances shall only be taken out by the supplier upon written instruction and for the account of the customer.
- ¹If formal acceptance is to take place, such acceptance will be decisive for the passing of the risk. ²Acceptance shall take place without undue delay at the time determined for delivery, however at the latest after the supplier has given notice that the goods are ready for acceptance. ³The customer shall not be entitled to refuse acceptance due to a non-essential defect.

V. Securing retention of title

- ¹The supplier shall retain title in the contractual goods until full performance of all claims arising out of the contractual relation with the customer to the extent that such claims already exist at the time of concluding the contract. ²In the case of a current account, the retained title serves as security for the respective outstanding account balance. ³In the case of a breach of contract of the customer, in particular in the case of payment default, the supplier shall be entitled to recover the delivered goods and to revoke the contract to such extent. ⁴After recovery of the goods the supplier shall be entitled to realise the value of the goods, even by means of a private sale. ⁵The proceeds from the realisation, less appropriate costs of realisation, shall be credited to the payables of the customer vis-à-vis the supplier.
- ¹While the retention of title is in effect, the customer shall be obliged to store the goods correctly, handle them with care and adequately insure them at the customer's own expense at replacement value against damage resulting from fire, water, breakage, theft and other damage. ²Any works required for maintenance or inspection shall be performed by the customer at their own expense.
- ¹Prior to full payment, the customer may not pledge or transfer the contractual goods for security. ²In the event of a pledging or other intervention of third parties, the customer shall immediately notify the supplier. ³To the extent that the third party is not able to compensate the supplier for the costs of a judicial or extra-judicial proceeding filed against the supplier, the customer shall compensate the incurred losses.
- ¹The customer shall be entitled to resell the contractual in the ordinary course of business, unless the customer is in default of payment. ²Already upon conclusion of the contract the customer shall assign all rights against the customer's buyers or third parties accruing to the customer from the resale, irrespective of whether the contractual goods are resold without or after processing. ³Even after assignment, the customer shall remain entitled to collect such claims. ⁴The supplier shall be entitled to collect the claim, however, the supplier undertakes not to do so as long as the customer is not in default of payment and in particular, as long as no motion has been filed to commence insolvency proceedings in respect of the customer's assets. ⁵However, if that is the case, the supplier may request that the customer notifies him of the assigned claims and their corresponding debtors, provides all information required for the collection of such claims, submits the corresponding documentation and informs the third parties (debtors) about the assignment.
- ¹The processing and transformation of the contractual goods by the customer is done at all times on behalf of the supplier. ²If the contractual goods are processed together with other goods not belonging to the supplier, the supplier shall obtain the ownership of the new thing in the ratio of its value (final invoice amount including any statutory VAT) to the other processed things at the time of processing. ³In all other respects, the same rules apply to the thing resulting from the processing as for the goods delivered subject to retention of title.
- ¹If the contractual goods are processed together with other goods not belonging to the supplier, the supplier shall obtain the ownership of the new thing in the ratio of its value (final invoice amount including any statutory VAT) to the other processed things at the time of processing. ²If the combination or intermixture takes place in such a manner that the goods of the customer are to be considered as the main object, it is deemed to have been agreed that a pro-rata share of co-ownership shall be transferred to the customer. ³The customer shall take custody of the sole or co-ownership thus established on behalf of the supplier. ⁴In all other respects, the same rules apply to the thing resulting from the combination or intermixture as for the goods delivered subject to retention of title.
- ¹In order to secure the claims of the supplier against the customer, the latter shall also assign such claims against third parties as accrue to the customer for the combination of the contractual goods with immobile property.
- The supplier undertakes to release the securities to which he is entitled at the written request of the customer to the extent that the obtained value of the securities exceeds the value of the claims to be secured by at least 10 %; the supplier shall be entitled to select the securities that are to be released.

VI. Liability for defects

- ¹The supplier's liability for defects is contingent on the customer having properly complied with the inspection and duty to notify defects as required by Section 377 Commercial Code (HGB). ²The customer shall notify defects in writing.
- ¹If contractual goods are defective, the supplier may cure the defect at his option either by remedying the defect or by delivering defect-free contractual goods. ²The necessary expenses for curing the defect, in particular the shipping, road, labour and material costs shall be borne by the supplier, unless such costs were caused by the fact that the contractual goods were transported by the customer to a location other than the place of performance. ³Parts replaced in the scope of the defects cure shall become the property of the supplier.
- If the goods remain defective even after repeated cure, the customer shall be entitled to revoke the contract in accordance with the statutory provisions regarding the revocation of a contract, reduction of the contract price or in accordance with the provisions of Section VII (Liability) on damages.
- ¹The limitation period for claims relating to defects shall be 12 months from the time of the passing of the risk in respect of the contractual goods. ²The statutory time-limits shall apply to defective contractual goods that were used in accordance with the customary manner for a construction and have caused this construction to be defective. ³These provisions shall also apply to the extent that the supplier has undertaken to warrant certain properties of the contractual goods or fraudulently conceals a defect, in the case of an injury to life, body or health as well as in the case of an intentional or grossly negligent violation of obligations.
- ¹Merely trivial deviations from the agreed quality or merely trivial limitations to the suitability of the contractual goods, inappropriate or improper use of the contractual goods, their erroneous assembly or putting into operation by the customer or third parties, ordinary wear and tear, erroneous or negligent treatment, improper maintenance, excessive use, unsuitable operational materials, defective construction works, unsuitable construction ground as well as chemical, electro-chemical or electrical impacts that were not to be expected according to the contract shall not give rise to claims for defects. ²The supplier shall also not be liable for improper modifications or repairs by the customer or a third party, nor for any consequences resulting therefrom.
- The right of recourse pursuant to Sections 478 and 479 BGB are not affected by the above provisions.

VII. Liability

- ¹In principle, the supplier shall only be liable for claims for damages if the supplier or a person used to perform an obligation of the supplier have acted with intent or gross negligence. ²In the case of an infringement of essential contractual duties, the supplier shall also be liable for simple negligence, however limited to contract-typical, foreseeable damage. ³In all other respects, liability shall be excluded.
- ¹The provision of No. 1.) shall not apply in the case of injury to life, body and health, or to compulsory statutory claims pursuant to the Product Liability Act. ²It shall also not apply to liability for the fraudulent concealment of defects and the assumption of a written warranty.
- Any exclusion or restriction of the liability of the supplier shall also apply to the personal liability of the supplier's employees and worker, personnel, representatives and of other persons used to perform the supplier's duties or his vicarious agents.

VIII. Software use

- ¹If the scope of delivery includes software, the customer shall be granted a non-exclusive right to use the supplied software and its documentation for the sole purpose of the supplied contractual goods and to the legally permitted extent, in particular subject to Sections 69a et seq. of the Copyright Act (UrhG). ²The customer shall not be entitled to remove or change details of the manufacturer, in particular copyright notices.
- ¹All other rights to the software and its documentation, including copies, are reserved for the supplier or the software supplier. ²The customer shall not grant any sub-licences.

IX. Applicable law, place of performance, jurisdiction

- This contract shall be governed exclusively by the laws of the Federal Republic of Germany (excluding the UN Convention on Contracts for the International Sale of Goods).
- ¹The place of performance shall be the registered office of the supplier. ²If the customer is an entrepreneur for the purposes of Section 14 BGB, a legal person under public law or a special fund under public law, the registered office of the supplier shall be the exclusive place of jurisdiction at the same time. ³However, the supplier shall also be entitled to sue the customer in the courts at the latter's registered office.

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