

General Conditions for Sale and Supply for Export to China of TARTLER GmbH

I. GENERAL PROVISIONS

1. The following provisions apply to all contract orders, including contract orders placed with such sales agents as authorized by the Supplier. Any other condition shall only be binding on us if recognized as such by us in writing.
2. Orders submitted by telephone or by telefax are only accepted at the Customer's risk. Oral statements by Supplier's representatives or employees shall only be binding when confirmed in writing.
3. Any alteration of individual provisions shall not affect the other provisions.
4. Obvious errors and mistakes contained in offers, order confirmations, invoices etc, including typing errors, are not binding.
5. The written order confirmation issued by the Supplier is definitive for the scope of Supplier's duty to supply. The Customer's offer or order shall only be deemed to have been accepted by the Supplier upon its issuance of a written order confirmation.
6. The Customer may cancel the order after issuance of the order confirmation by the Supplier only on terms which will compensate the Supplier for loss due to such cancellation. The Customer may cancel the order only when the products are re-salable and the Customer pays restocking, shipping, handling and other charges as reasonably determined by the Supplier.

II. OFFERS

1. The documents, such as illustrations, drawings, weight and dimension specifications, details about procedures, consumptions and services that form part of the offer shall be deemed to be approximate values only unless expressly agreed by both the Supplier and the Customer as binding. We reserve all property rights and copyright to cost estimates, drawings and other documents: they shall be kept confidential by the Supplier and shall not be made available to third parties. We undertake to keep confidential such documents provided by the Customer that are specified as confidential in writing and only make them available to third parties with the Customer's permission.

III. SCOPE OF DELIVERY

1. The scope of delivery is determined by our written order confirmation. Ancillary provisions and amendments shall only be binding if confirmed by us in writing.
2. The delivered item is equipped in accordance with the principles specified in the Act on Technical Work Equipment and Consumer Products of Germany (Gesetz über technische Arbeitsmittel). The cost of additional equipment required due to local conditions, for the assembly of machinery parts, ordinances, directions laws, regulations or instructions of the competent local authorities, which are incurred after conclusion of the contract or due to differing views held by the competent local authorities about the generally accepted rules of technology or product safety, shall be borne by the Customer.
3. The Supplier reserves the right to make changes and improvements regarding construction, material use and design to the extent that it does not affect the serviceability of the delivered item.

IV. PRICES, DELIVERY, DELIVERY PERIOD

1. Unless otherwise agreed, prices are ex works, exclusive of costs for shipping and packaging. Prices are exclusive of the applicable statutory value-added tax, customs duties or any other taxes. We reserve the right to also make delivery from any other place - at our choice - within Germany.
2. Unless otherwise agreed, spare parts are supplied C.O.D. (Cash on Delivery) of the invoiced amount.
3. The delivery period shall commence upon transmission of the order confirmation, however not before all necessary documents, approvals, releases that are to be provided by the Customer have been submitted and payment of the agreed down payment has been made. Delivery shall be timely if the goods have left the factory upon expiry of the delivery period or if we have notified the Customer of our readiness to deliver.
4. Default penalties or other claims for damages due to delayed delivery are not applicable unless specifically agreed by the Supplier.
5. If shipping from the Supplier's factory is delayed at the request of the Customer, the costs resulting from storage, and in case of storage at the factory, at least 1 % of the invoice amount per month will be charged to the Customer, beginning with the month after notice of readiness to deliver has been notified. However, we shall be entitled, after setting an adequate period and upon expiry of this period without result, to dispose otherwise of the item to be delivered and make delivery of a new item to the Customer within a reasonably extended period. If the item is tailored for the Customer, the Supplier shall be entitled to deliver the item to the Customer at the cost of the Customer.
6. Observance of the delivery period is in principle contingent on the fulfillment of the Customer's contractual obligations.
7. If the Customer is in default of acceptance by a period of two weeks after expiry of the agreed delivery period or after notification that the item is ready for delivery, or if the Customer fails to communicate the delivery address within this period of time, we shall be entitled, without prejudice, to the Supplier's rights specified in Section IV.3., to set a grace period of two weeks for acceptance of the item to be delivered, accompanied by a declaration that upon expiry of this period we will, at our choice, revoke the contract (Rücktritt) and claim damages for non-performance. In the latter case, we shall then be entitled to demand liquidated damages amounting to 15 % of the agreed purchase price without further evidence and without prejudice to any further claims for actual damages. The same applies, subject to the necessary amendments, if the Customer has already declared in advance that he will fail to accept or if he is in default with performing his other contractual obligation (in particular, payment obligations) for more than two weeks.
8. The Customer shall be responsible for customs clearance and all other necessary formalities to be handled with the local government authorities.

V. PAYMENT TERMS

1. Unless expressly agreed otherwise, payment must be made within 30 days from the date of invoice without any deduction.
2. We are entitled to offset payments against older, outstanding invoices.
3. When payment is not made in good time, we shall be entitled to demand default interest at the rate of 8 % above base interest rate as set by the German Bundesbank. We reserve all rights to claim further damages.
4. Payment by bill of exchange shall only be admissible after prior agreement by Supplier. Bills of exchange and checks shall only be accepted as an undertaking to pay and only become effective payment upon being honoured. Bank fees shall be borne by the Customer.
5. If the Customer is in default of payment we shall be entitled to demand payment of all due and incontestable receivables arising out of the business relationship. This right shall not be affected by any deferral of payment or the acceptance of bills of exchange or checks.
6. The customer shall be entitled to offset with non-contentious counterclaims or counterclaims that have been ascertained with the force of law. The customer has no right of retention.

VI. DELIVERY IMPEDIMENTS AND/OR DISSOLUTION

1. The delivery period shall be extended appropriately in case of measures relating to labour disputes, in particular strikes or lock-outs, and upon occurrence of unforeseen obstructions which are beyond the control of the Supplier, to the extent that such obstructions are shown to have a material impact on the completion or supply of the delivered item. The same shall also apply if circumstances occur in the sphere of the sub-supplier. In such event, the Supplier may in its option cancel the delivery and refund any amounts paid by the Customer with no interest.
2. If Customer defaults on payment or we have reasonable cause to doubt Customer's financial stability or Customer's ability to meet its payment obligations, we shall be entitled to demand immediate payment in cash for delivered goods and security for goods yet to be delivered, or to terminate these General Terms and Conditions immediately upon notice to Customer.
3. Supplier will not accept returns of delivered goods without Supplier's prior agreement.
4. In no event shall the Supplier be liable for any incidental, consequential or punitive damages arising out of any delay in, or cancellation of delivery, or any failure to deliver.

VII. PASSING OF RISK AND RECEIPT

1. The risk shall pass to the Customer at the latest upon dispatch of the goods, even in cases where delivery is made in installments or if we have also assumed other services, such as shipping costs of delivery. At the request of the Customer, we shall insure the delivery against theft and damage resulting from breakage, transport fire or water as well against any other risks at Customer's expense.
2. If Customer's collection of the good is delayed for any reasons, the risk shall pass to the Customer on the date notice of readiness to deliver was sent to the Customer; however we shall insure the goods required by the Customer at the request and expense of the Customer.
3. Delivered goods are deemed to be accepted by the Customer even if they show non-material defects and subject to the rights specified in Section VII.
4. Partial deliveries shall be permitted.

VIII. WARRANTY

1. We shall assume warranty for warranted characteristics and for the goods being fault-free according to the respective state of the art. Modifications to the construction or to the model variants undertaken prior to delivery by us on general scale do not give rise an objection.
2. For our products of normal construction we assume a warranty of 12 months starting on the earlier of the date of delivery to the Customer or the date of initial putting into operation.
3. Depending on the decision of the supplying factory, the warranty is limited to a free-of-charge replacement of the parts that have become defect as a consequence of the material defect established by us. Repairs and installation shall either be carried out by our repair shop or by a repair shop authorized by us and at the expense of the Customer.
4. Warranty claims shall only be considered if they are asserted and notified in writing with satisfactory proof thereof and without undue delay after a defect has been established, however at the latest within 2 weeks, to the Supplier's factory or the Seller — at the choice of the Customer.
5. No warranty is offered on parts that are charged with synthetic resin and on wear parts such as dosing pumps, mixing head parts, etc.
6. We will supply new parts as quickly as possible. However, a delayed supply shall not give rise to any claim for damages or an extension of the warranty period.
7. The warranty does not include accessories and parts not manufactured by us.
8. The warranty expires if the purchased item is repaired (even partially), modified or simply dismantled outside of our repair shop or a repair shop approved by us. The same applies if the provisions on handling, maintenance, inspection intervals and operation contained in the operating manual are not observed, if the supplied item is modified by the Customer or any third party, or if ownership is transferred.
9. Defects and their causes will be inspected by us in any event; all shipping costs incurred in this respect are carried by the Customer. Replaced parts must be returned to the delivering factory at the cost of the Customer; ownership of the returned parts shall be transferred to the Supplier upon delivery.
10. Any expenses incurred in connection with the establishment of facts that may be requested by the Customer and approved by the Supplier shall also be carried by the Customer.
11. There shall be no claim to revoke the contract (Wandlung) or reduce the purchase price (Minderung) unless the Supplier is not able to remedy the defect.
12. No indirect or direct damage shall be compensated, unless caused intentionally.
13. We do not assume any warranty for specially manufactured items, for device combinations that were not tested and approved by us or for devices assembled outside our factory, unless these assemblies were made with special written approval or under supervision by a person authorized by our company. But also in these cases, acceptance by us is required in any event.
14. Furthermore, any warranty by the Supplier for the manufacture of test assemblies (prototypes) is excluded, unless the Supplier assumed warranty expressly and in writing within the scope of the above warranty provision upon delivery, or unless the test assembly is sold to a third party with the written consent of the Supplier.

15. Natural wear and damage caused by negligent or improper treatment are excluded from the scope of the warranty.
16. We shall not assume liability for any damage caused by natural disasters, breaking and entering, theft, fires and other unforeseen events or force majeure to the property of the Customer located on the premises of the supplier.
17. Specifications supplied by us with regard to weight, capacity, consumption, output or any other details are in all cases only approximate values, and we do not assume any formal obligation in this respect of such information. None of the cases above entitles the Customer to demand rescission of the contract or damages.

IX. EXPORT

1. Goods supplied by us may not be sold abroad or may be sold abroad only with our written consent. No consent is required for sales to EC Member States, EFTA Member States or the European Economic Area.
2. In case of a violation of this Section IX, in addition to damages we reserve the right to cancel all pending orders.

X. RETENTION OF TITLE

1. We shall retain title to the supplied item until all our claims against the Customer arising out of the business relationship, including future claims arising out of contracts that were concluded simultaneously or at a later stage, have been satisfied in full. This also applies if certain or all claims have been entered into a current account, and the balance has been stated and acknowledged. In case of any violation of these General Terms and Conditions by the Customer, in particular in the case of default of payment, we shall be entitled to recover the supplied item. Unless the German Instalment Purchase Act (Abzahlungsgesetz) applies, recovery or pledging of the supplied item by us shall only constitute a revocation of the contract if we make a corresponding express, written declaration. The Customer shall notify us without any undue delay of any pledging or other intervention by third parties. The Customer is entitled to sell the supplied item to third parties in the ordinary course of business. The Customer is also entitled to transfer direct possession of the supplied item to third parties. Claims of the Customer arising out of legal relations to third parties in connection with the transfer of possession of the supplied item are assigned to the Supplier already upon conclusion of the supply contract as an advance on the payment obligation. However, the Customer assigns to us already now all claims against his customers or against third parties resulting from the sale of the supplied item, irrespective of whether the goods subject to retention were sold before or after processing. Even after assignment, the Customer remains authorized to collect such receivables. This does not affect our right to collect the receivables; however, we undertake not to collect such receivables as long as the Customer duly fulfills his payment obligations. We shall be entitled to demand that the Customer discloses to us the assigned claims and their debtors, provides us with all information and documentation necessary for collection and informs the debtors about the assignment. If the supplied item is sold together with goods that are not our property, the Customer's claim against his customers is deemed to have been assigned in a pro rata share corresponding to the purchase prices agreed between the Customer and us. We undertake to release our securities to the extent that their value exceeds the secured and unsettled claims by more than 25 %.
2. The Customer is not entitled to pledge the supplied item or to transfer them as security. The Customer shall notify us without undue delay of any pledging or seizing or other intervention by a third party.
3. The customer is obliged to inform us without delay if the goods are attached, impounded or subject to any other form of intervention to enable us to take action under Section 771 ZPO (German Civil Code). If the third party is unable to refund us court and out-of-court costs of an action under Section 771 ZPO (German Civil Code), the customer is liable for making good the loss suffered by us.
4. The customer is obliged to treat the goods with care; in particular, the customer is obliged to insure the goods new for old at customer's cost against damage by fire, water or theft.
5. In case of any violation of the contract by the Customer, in particular in the case of default of payment, we shall be entitled to recover the supplied item after having given notice to the Customer. In this case, the Customer shall be obliged to return the item. Unless the Instalment Purchase Act applies, any assertion of the retained title or pledging by us shall not be deemed to be a revocation of the contract.
6. Any return of the Goods by the Customer to us is to be carried out at the expense of the Customer.

XI. PLACE OF JURISDICTION

1. The place of jurisdiction shall be Michelstadt/ i. Odw. (Hessen) or, at our choice, the location of the factory handling the order, if the Customer
 - is a registered merchant,
 - a legal person under public law or
 - a special fund under public law.We shall also be entitled, but not obliged, to file a claim before a court that is competent for the place where the Customer's registered office or an establishment of the Customer is located.
2. This contract is governed by the laws of the Federal Republic of Germany.

XII. SEVERABILITY CLAUSE

If one or more of the above provisions are void or contain a gap, the other provisions shall remain effective. The void clause shall be substituted by a provision which reflects most closely the intention of the contracting parties. In all other respects, the statutory provisions apply.