

## General Terms of Sale and Delivery

### I. General, Offers and Contracts

1. These Terms of Sale and Delivery apply to all deliveries taken on by BUSE Gastek GmbH & Co. KG (the "Supplier"), unless differing agreements have been made in the individual case. They are part of any contract completed between the Supplier and the Customer and apply also to all future business relations, even if they are not expressly agreed on again. These terms and conditions are deemed accepted at the latest upon acceptance of the service.
2. Counter confirmations of the Customer, referring to his Terms of Business and Purchase, are hereby objected to. Such terms are only binding if they have been agreed on in writing with the Supplier in the individual case; such agreement, however, only applies to the precise individual case and does not have a binding effect on future business.
3. All offers are subject to confirmation and non-binding until the respective contract has been entered into. The respective documents of the offer, in particular illustrations, drawings, plans, calculations, tables, weight parameters and similar information are merely guidelines unless they are expressly declared as binding.
4. A contract – in the absence of a special agreement – is concluded by the written order confirmation of the Supplier.
5. The Supplier reserves the title and copyright to samples, estimates, drawings and similar information of physical and non-physical nature – even in electronic form; they must not be made accessible to third parties.

The Supplier shall undertake to make information and documents which the Customer describes as confidential accessible to third parties with the latter's approval only.

6. These Terms of Sale and Delivery only apply vis-à-vis enterprises in the meaning of § 310 German Civil Code.

### II. Price, Terms of Payment, Default

1. In the absence of a special agreement, prices are quoted ex works including loading at the works, however excluding packaging and unloading. Prices are added by turnover tax at the respectively applicable statutory amount. Insurance, customs duties, assembly and commissioning are not included in the price either.
2. The Customer is only entitled to the right to retain payments or to offset payments against counter claims to the extent that his counter claims are undisputed or have been recognised by declaratory judgment.
3. If the performance of the contract is delayed by default of the Customer the Supplier may increase the prices agreed on if in the meantime an increase of the cost of material or wages has occurred.
4. From default on, interest at a rate of 8% above the basic interest rate of § 247 German Civil Code is due.
5. Payments by cheque or bill are subject to the expressive approval of the Supplier. In referring to this mode of payment, all costs and expenses arising from redeeming these papers are for the account of the Customer. If bills/cheques are accepted by the Supplier then such acceptance is on account of performance (*erfüllungshalber*). The payment is only deemed effected once the bill/cheque has been honoured and the amount was not charged back.
6. The Supplier is free to demand sufficient securities for his receivables. If the Customer breaches contractual agreements or if circumstances arise which limit the Customer's creditworthiness, all outstanding receivables are due for immediate payment. This also applies to accepted cheques and bills, irrespective of their originally valid term.

### III. Delivery Period, Delay in Delivery, Scope of Delivery

1. Delivery times and delivery dates are non-binding unless otherwise expressly agreed on in writing. The period of delivery results from the agreements made between the contract parties. Compliance with the same by the Supplier prerequisites that all commercial and technical matters between the contract parties have been clarified and the Customer fulfilled all duties which he was obliged to meet, such as procurement of the necessary official certifications or approvals or effecting a down payment. If this is not the case, the period of delivery shall be extended accordingly. This does not apply if the Supplier is responsible for the delay.
2. Observing the delivery times is subject to the correct and timely self delivery of the Supplier. The Supplier shall notify any emerging delays as soon as possible.
3. The delivery time is adhered to if the object of delivery has left the works of the Supplier before expiration of delivery time, or if it has been indicated that the object is ready for dispatch. If an acceptance is required – except in the event of a justified refusal of acceptance – the acceptance date is decisive, secondarily the notification of readiness for acceptance.
4. If the dispatch or the acceptance of the object of delivery is delayed for reasons for which the Customer is responsible, such costs which arise from the delay will be charged to him, commencing one month after notification of the dispatch or readiness for acceptance.
5. If the non-observance of the delivery time is due to Force Majeure, industrial action or other events on which the Supplier has no influence, the delivery time is extended accordingly. The Supplier will inform the Customer of the beginning and the end of such circumstances as soon as possible. If such impairment lasts longer than three months the Customer, after an appropriate period of grace, is entitled to rescind the contract with regard to such part of the contract which has not yet been fulfilled.
6. The Customer can rescind the contract without setting a time limit when it becomes finally impossible for the Supplier to perform the entire service prior to passing of the risk. Moreover, the Customer can rescind the contract if the performance of part of the delivery becomes impossible and he has a justified interest in refusing the part delivery. If this is not the case, the Customer is to pay the contract price due for the part delivery. The same applies in the event of the Supplier's personal inability. In other respects, subsection VII. 2 applies.

If such impossibility arises during the delay of acceptance, or if the Customer is solely or mainly responsible for these circumstances, he remains liable for consideration.

7. If the Supplier is in default and the Customer sets a reasonable time limit for the Supplier – taking into account the statutory cases of exception – after the due date for the fulfilment and if this time limit is not observed, the Customer is entitled to rescind the contract within the framework of the statutory regulations.

Further claims resulting from the default of delivery are determined exclusively by subsection VII. 2 of these terms and conditions.

8. Eventually required foundation work, special internal measures of protection and similar preparatory works are not included in the scope of delivery. They must be performed by the Customer at his expense and in due time. If they are not provided for upon delivery, the Supplier is not in default.
9. Unloading and taking the objects of delivery to the installation site is the duty of the Customer. Upon the Customer's request staff of the Supplier trained for these services can be provided against invoice. This is in addition subject to the Supplier's Terms of Assembly.
10. Assembly, commissioning and instruction of the Customer's staff are not included in the scope of delivery. Upon the Customer's request staff of the Supplier trained for these services can be provided against invoice. This is in addition subject to the Supplier's Terms of Assembly.
11. If no particular form of dispatch has been agreed on with the Customer the dispatch will be effected in the best manner according to the Supplier's own discretion. The dispatch is then effected for the account and at the risk of the Customer. Liability is not accepted for damage and loss incurred during transport.

12. Part deliveries are permissible if they are reasonable for the Customer.

#### IV. Passing of Risk, Acceptance

1. The risk passes to the Customer when the object of delivery has left the works, even if part deliveries are effected or if the Supplier has taken on other services, e. g. the dispatch costs or delivery and installation. As far as an acceptance is required, such is decisive for the transfer of risk. It must be carried out without undue delay at the date of acceptance, secondarily after notification of the Supplier regarding the readiness for acceptance.

The Customer may not refuse the acceptance in the event of a minor defect.

2. If the dispatch or the acceptance is delayed or not effected due to circumstances which cannot be ascribed to the Supplier, the risk passes as of the day of notification of the readiness for dispatch or acceptance to the Customer.
3. The Supplier shall undertake to take out insurance at the cost of the Customer, as he explicitly demands.
4. Transport and any other packaging according to the packaging regulation will – with the exception of pallets – not be taken back. The Customer is obliged to disposal on its own costs.

#### V. Reservation of Title

1. The Supplier reserves the title to the object of delivery until receipt of all payments from the supply contract. As far as Supplier and Customer agreed to payment with cheques/bills, this retention is extended to the encashment of the accepted bills by the Supplier and does not cease with credit of the given cheques with us. This also applies if the object of delivery is combined with moveables or is modified or processed. For this, the Customer already assigns in the proportion of the value of the delivered goods (invoice amount incl. VAT) to the other processed assets at the time of the processment, subject to different written agreements to secure the existing claim, the co-title in the created property to the Supplier subject to the simultaneous stipulation that the Customer will store the property free of charge for the Supplier. The Customer also assigns as security any claims arising out of the combination of the delivered goods with a real property of a third party.
2. The Supplier is entitled to insure the object of delivery at the cost of the Customer against theft, breakage, fire, water and other damage unless the Customer himself provides proof of having taken out such insurance.
3. The Customer must neither sell nor pledge the object of delivery nor assign it by way of security. In the event of attachments as well as confiscation or other orders by third parties he must inform the Supplier without undue delay.

All claims against third parties resulting from confiscations, orders or otherwise from the goods owned or co-owned by the Supplier are hereby assigned by the Customer to the Supplier.

4. If the Customer acts in breach of contract, particularly in the event of a default in payment, the Supplier is entitled to take back the object of delivery following a reminder, and the Customer is obliged to hand out the same.
5. Due to the reservation of title the Supplier can only demand that the object of delivery be handed over if he rescinded the contract.
6. The application to institute insolvency proceedings on the assets of the Customer entitles the Supplier to rescind the contract and to demand the immediate return of the object of delivery.
7. All costs which the Customer incurs by way of non-adherence of the obligations imposed on him or his buyers in view of the reservation of title agreed on here, in particular the extended reservation of title, are for the account of the Customer. This also includes the possible renewed installation costs in the event of taking back the object of delivery.

8. The Customer is obliged to treat the object of delivery carefully and eventually perform maintenance and inspection works when due.
9. The Supplier shall on demand of the Customer release any part of the security if the value of the security held in favour of the Supplier exceeds not only temporarily the value of the claims being secured. It is to the Supplier's decision to release those parts of the security suitable for him.

## VI. Claims for Defects

For material defects and defects of title to the delivery the Supplier shall warrant as follows, excluding further claims – subject to paragraph VII:

### Material Defects

1. All such parts are to be touched up or replaced free of defects and free of charge and at the discretion of the Supplier which as a result of a circumstance prior to the passing of the risk turn out to be defective. The establishment of such defects must be reported immediately to the Supplier in writing. Replaced parts become the property of the Supplier.
2. The Customer shall examine the Goods as required by German law (§ 377 German Commercial Code) and raise any objections.
3. To perform any overhaul work and substitute deliveries which seem necessary to the Supplier the Customer shall, after communicating with the Supplier, provide the required time and opportunity; otherwise the Supplier is exempt from liability of the consequences resulting therefrom. The procurement period for material and spare parts as well as personnel capacities of the Supplier are to be taken into account.

Only in urgent cases of a risk to operational safety or to prevent unreasonably severe damage, whereby the Supplier is to be informed immediately, does the Customer have the right to remedy such defect himself, or have it remedied by third parties and demand compensation from the Supplier for the necessary expenses.

4. The Supplier shall bear the direct costs arising as a result of the rectification of defects or substitute delivery provided the complaint is justified.
5. Within the framework of the statutory regulations, the Customer has a right to rescind the contract if the Supplier – taking into account the statutory cases of exception – allows for the futile passing of an appropriate time limit granted to him to rectify the defects or to effect a substitute delivery of a material defect, see also the stipulations under subsection VI. 3 of these terms and conditions. If the defect is only minor, the Customer is merely entitled to the right of a reduction of the contract price.

Further claims are subject to subsection VII. 2 of these terms.

6. Warranty is not accepted in particular for the following cases:

Inappropriate or improper application, incorrect assembly or commissioning by the Customer or third parties, natural wear, faulty or negligent treatment, excessive use, improper maintenance, inappropriate operating material, poor construction work, unsuitable building ground, damages caused by water, mechanical, chemical, electrochemical or electrical influences – unless they are the responsibility of the Supplier.

7. If the Customer or a third party rectifies the defects incorrectly, the Supplier is not liable for consequences resulting from this. The same applies for changes or modifications to the object of delivery performed without the prior approval of the Supplier, internal intervention as well as changes of the location (the latter only for cryogenic installations).

## Defect of Title

8. If the use of the object of delivery leads to the violation of industrial property rights or copyrights, the Supplier shall generally procure for the Customer the right for the further use at the Suppliers' cost, or shall modify the object of delivery in a manner tolerable for the Customer as such that there is no longer a violation of property right.

If this is not feasible at economically reasonable conditions or within a reasonable time limit the Customer is entitled to rescind the contract. Subject to these requirements the Supplier is also entitled to the rescission of contract.

Moreover, the Supplier shall exempt the Customer of undisputed claims or claims recognised by final judgment of the respective holders of the protective right.

9. The obligations of the Supplier named in subsection VI. 8 are final subject to subsection VII. 2 in the event of violation of protective rights or copyrights.

They exist only if

- the Customer immediately informs the Supplier of the asserted violation of protective rights or copyrights,
- the Customer supports the Supplier to an appropriate degree in defending the claims asserted, or enables the Supplier to perform modifications pursuant to subsection VI. 8,
- the Supplier reserves all defending measures including out of court regulations,
- the defect of title is not due to an instruction of the Customer and
- the infringement of a right was not caused by the Customer independently modifying the object of delivery or using it in a manner inconsistent with contractual stipulations.

## **VII. Liability/Exclusion of Liability**

1. If the object of delivery cannot be used by the Customer according to contract due to the Supplier's fault as a result of the omitted or faulty performance of proposals and consultations prior to or after the signing of the contract, or as a result of the violation of other contractual collateral obligations – in particular the instructions for operation and maintenance of the object of delivery – then the stipulations pursuant to subsection VI. and VII. 2 apply accordingly, excluding any further claims of the Customer.
2. For damage not incurred to the object of delivery as such, in particular for lost profit and other financial loss, the Supplier can only be held liable, irrespective of the legal cause, in the event of
- a. intent,
  - b. gross negligence of the owner/the bodies or executives,
  - c. culpable injury to life, body, health,
  - d. defects which he concealed fraudulently or whose absence he guaranteed,
  - e. defects to the object of delivery to the extent of the liability according to the German Product Liability Act for personal injury or material defects to privately used objects.

In the event of the culpable violation of material contractual obligations the Supplier is also liable in the event of gross negligence of non-executives and for minor negligence. In cases of minor negligence the liability is limited to the order value, but at least the typical damage according to contract which is reasonably foreseeable.

Further claims are excluded.

**VIII. Statute of Limitations, Warranty Period, Special Warranty Terms**

1. All claims of the Customer – irrespective of their legal cause – are subject to a 12-month statute of limitation. The warranty is excluded if used goods are sold to the Customer. The statute of limitations commences with the passing of risk. If the assembly has been agreed on, the warranty commences with the acceptance of the assembly, however no later than upon commissioning. In the event of a late delivery, assembly or commissioning by default of the Customer the claims are subject to a 12-month statute of limitation after the readiness for dispatch has been indicated. With regard to claims for damages pursuant to subsection VII. 2.a – e the statutory time limits apply. They also apply for defects of a building or for objects of delivery which were applied to a building according to their usual manner of use and thus causing its defectiveness.
2. The substitution or rectification during the period of warranty does not prolong the liability for defects of the original object of delivery.
3. For major external products the Supplier is liable within the framework of the warranty of his sub-suppliers to which he is entitled. For parts provided by the Customer the Supplier does not accept any liability.
4. In the field of cryogenic plants or parts of plants special warranty terms apply, depending on the annual hours of operation. These terms are negotiated by individual contract and are itemised in the offer, order confirmation or contract of sale.

**IX. Use of Software**

If software is included in the scope of delivery the Customer is granted the non-exclusive right to use the software provided, including its documentation. It is left for use on the object of delivery intended for this. The use of the software on more than one system is prohibited.

The Customer may only reproduce, revise, translate or change the software from object code to source code at the legally permissible scope (§§ 69a ff. German Copyright Act). The Customer shall undertake not to remove the manufacturer's details – in particular copyright notes – or change these without the express prior approval of the Supplier.

All other rights to the software and the documentation including the copies remain with the Supplier or the software supplier. The granting of sub-licenses is not permissible.

**X. Applicable Law, Jurisdiction**

1. These terms and all legal relations between the Supplier and the Customer are exclusively subject to the decisive law of the Federal Republic of Germany. The uniform purchase law based on international conventions for the sale of goods, in particular the Uniform Law on the Formation of Contracts for the International Sale of Goods and on the completion of these contracts of sale (Hague Convention Relating to the Sale of Goods), as well as the UN Sales Convention, and the Vienna Convention on Contracts for the International Sale of Goods do not apply.
2. The place of performance – also internationally – is the domicile of the Supplier.
3. The competent courts at the domicile of the Supplier shall have jurisdiction for all disputes, even on an international scale. However, the Supplier is entitled to sue the Customer at his general venue.

The Supplier points out that data are stored for the purpose of automatic processing.

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