

# Terms of Sale and Delivery



May 2017

## I. General

1. Our terms of sale and delivery - referred to hereinafter as terms and conditions - shall apply exclusively; we do not accept the customer's own terms and conditions if different or contrary to our terms and conditions. Our terms and conditions shall apply even if we execute delivery to the customer without reservation in the knowledge of the customer's terms and conditions that are different or contrary to our terms and conditions.
2. Orders sent to us will be acknowledged in writing or in text form. The letter of acknowledgment shall be carefully checked by the customer upon receipt. The details specified therein shall be binding for further processing of the order. Any changes shall be notified to us in writing or in text form by the customer without delay.
3. All quotations issued by us are subject to change and without obligation. A contractual relationship shall only come into force when it has been acknowledged by us in writing or the goods are delivered. If an order addressed to us is sent by e-mail and that e-mail is confirmed as received, such confirmation shall not constitute acknowledgment of the order.
4. We retain copyright in cost estimates, drawings and other documents compiled by us. If an order is not placed, any drawings and other documents compiled by us and enclosed with the quotation shall be returned without delay on demand.
5. We store our customers' data in the context of business relations between us in accordance with the provisions of the Federal Data Protection Act.

## II. Prices

1. Unless agreed otherwise, our prices are quoted ex works including standard packaging and in euros.
2. The prices quoted in order acknowledgments apply exclusively to the dimensions and versions specified therein. We shall be entitled to charge correspondingly higher prices for divergences from the original order, any changes in version or additional performances ordered by the customer and implemented.
3. Our prices are quoted exclusive of value-added tax at the statutory rate. It is itemized separately in the invoice at the statutory rate in force on the invoice date.

## III. Payments

1. Payments shall be effected in accordance with the agreed terms of payment. Payments shall be deemed to have been effected on the date on which the sum is at our disposal (obligation to be performed at the creditor's habitual place of residence) and shall be set off against the oldest debt due. They shall be set off against costs, interest and the principal outstanding, in that order.
2. Invoices shall be payable within 30 days of the invoice date, unless otherwise agreed.
3. If payments are in arrears, we shall be entitled to charge interest on the defaulted sum at the statutory rate. The right to claim further damages due to delayed performance is reserved.
4. The customer shall only be entitled to set off payments against counterclaims which have been legally established by a court of law, which are undisputed or which have been accepted by us in writing or in text form. Moreover, the customer may only withhold payments if the counterclaim is based on the same contractual relationship.

## IV. Delivery / shipment

1. Our quoted time for delivery shall not start until the customer has correctly fulfilled its obligations in a timely manner. The right to plead non-performance of the contract is reserved.
2. If the customer is in default in acceptance or culpably fails in other duties to cooperate, we shall be entitled to demand compensation for the loss thereby suffered, including any extra expense incurred. The right to assert other claims or rights is reserved.
3. If the goods are dispatched at the customer's request the risk of accidental loss or deterioration of the goods shall pass to the customer upon dispatch to the customer by the stipulated delivery date and at the latest upon leaving the factory or warehouse.

This shall apply irrespective of whether the goods are shipped from the place of performance or who bears the shipping costs. If dispatch is delayed by actions or declarations by the customer, the risk shall pass to the customer as from the date on which the goods are ready for shipment.

## V. Reservation of proprietary rights

1. We reserve ownership of the goods until receipt of all payments arising from the business relationship with the customer.
2. In case of breach of contract by the customer and particularly if payments are in arrears, we shall be entitled to rescind the contract and reclaim the goods after setting an appropriate period of grace. After taking back the purchased goods we shall be entitled to dispose of the goods and the proceeds from such disposal shall be set off against our claims against the customer.
3. The customer shall treat the goods with care and in addition shall insure them adequately and, if maintenance and servicing are necessary, shall duly carry out such work at its own expense.
4. The customer shall inform us immediately in writing or in text form in the event of seizure or other third party intervention.
5. The customer is entitled to resell the goods in the ordinary course of business. However, the customer herewith assigns its future claims (including value-added tax at the rate in force) arising from resale against third party to us according to the invoice value of the goods. The customer shall remain entitled to collect the claims but, if the customer fails to meet its payment obligations, gets into arrears of payment or if an application for commencement of composition or insolvency proceedings is made, the customer shall give us the name of its customer and the third party and the invoice details of the goods sold.
6. Processing or conversion of the goods by the customer shall always be undertaken on behalf of us. If the goods are processed or mixed with other objects we shall acquire joint ownership of the new thing in proportion of the value of the goods to the other processed or mixed objects at the time of processing.
7. The customer shall also assign to us as security for the claims against him the claims arising against a third party from combination of the goods with a property. CLAGE GmbH hereby accepts the assignment.

## VI. Warranty

1. Any warranty rights and rights of recourse on the customer's part shall be dependent upon the customer's having duly fulfilled his obligations of examination and notification of defects in accordance with Section 377 of the German Commercial Code.
2. The usual minor technical deviations in design or workmanship (e.g. quality, colour, size) of the goods shall not constitute a defect, insofar as they do not significantly impair either the serviceability or the value of the goods, and shall not confer any warranty rights.
3. If at the time of passing of risk the goods are defective the customer shall have the option of subsequent performance in the form of remedying of the defect or delivery of a faultless new replacement. In the case of subsequent performance we shall bear all the expenses necessary for the purpose of remedying the defect except for any increases due to the goods having been moved to a different location from the place of performance.
4. The warranty shall not include such defects or damage attributable to incorrect handling, use or installation of the goods by the customer or other third parties. In addition, warranty claims shall be excluded in the case of goods on which work has been undertaken by third parties without our consent.
5. Liability cannot be accepted for any damage or losses due to the build-up of scale or chemical or electrochemical action, or to the use of supplementary, replacement or accessory parts and

fittings which have not been specially adapted to our goods; this also applies to damage or losses due to non-compliance with the installation and operating instructions.

6. If the customer has received goods and satisfies warranty claims, based on its own customer's warranty right, arising from a defect in the goods that was present at the time of passing of risk, the customer shall be entitled to demand compensation only for the foreseeable expenses typically necessary for that purpose.
7. The statutory warranty periods shall apply. A one-year period of limitation shall apply in the case of commercial, craft and industrial enterprises or activities of a similar or comparable nature (e.g. freelance or professional work).

## VII. Liability

1. We shall be liable as provided by law in the event of intent or gross negligence on our part or that of our vicarious agents and likewise in the case of culpable breach of essential contractual obligations.
2. Our liability for culpable injury to life, limb or health and our liability in accordance with the German Product Liability Act shall be unaffected.
3. In the event of negligently caused property damage or pecuniary loss CLAGE GmbH and its vicarious agents shall be liable only if an essential contractual obligation has been breached. The amount shall be limited to the losses foreseeable and typical at the time of the conclusion of the contract.

## VIII. Taking back and disposal

1. Consumers may dispose of goods produced by us that come under the German Act on the Marketing, Taking Back and Environmentally Sound Disposal of Electrical and Electronic Equipment (ElektroG) by taking them to a municipal collection point. This is a free service.
2. Customers reselling our goods for payment or without payment to external third parties carrying on a commercial, craft or industrial enterprise or other similar or comparable activities shall give us an undertaking that they will meet the cost of correct disposal in accordance with the above-mentioned Act.
3. Our claims for the meeting of costs and any consequential claims shall become due as soon as we are notified by the customer or a third party (e.g. authority) of the disposal costs actually incurred.

## IX. Jurisdiction and applicable law

1. The place of performance and exclusive place of jurisdiction for all disputes arising from this contract shall be at our headquarters (Lüneburg), unless otherwise stated in the order acknowledgment.
2. The laws of the Federal Republic of Germany shall always apply. The UN Convention on the International Sale of Goods (CISG) is herewith explicitly excluded.
3. We are, in principle, unwilling and not obliged to participate in any dispute resolution procedure at a consumer conciliation committee.
4. If any of the provisions prove or become partly or completely invalid, this shall not affect the validity of the remainder.