

# GENERAL DELIVERY CONDITIONS

## 1. General terms and conditions

Quotations are without engagement. An order is only deemed to be accepted, when confirmed by us in writing. Our written order acknowledgement is decisive for the scope of delivery. Any supplements, additional agreements as well as promises of representatives require our written confirmation. The purchaser is not entitled to transfer any rights from this contract without our approval.

## 2. Prices and terms and conditions of payment

The prices are those valid on the day of delivery. The agreed prices are calculated on Euro basis. Unless agreed otherwise, our prices are ex works excluding packing. In the cases where we bear the costs of transportation, we only accept liability for the means of transport described in the contract. Unless agreed to the contrary, dispatch will be made at our discretion and without obligation to select the least expensive method of dispatch. Our packaging complies with the German Packaging Ordinance. Any return of packaging material must be free of charge and with freight prepaid. Payment of our invoices is to be made within 30 days after the date of the invoice with 2% discount or within 60 days after the date of the invoice, net. If agreed periods of payment are exceeded, a compensation amounting to the common bank interests and fees for open business credits, however, at least 5% above the base rate shall be charged, without a special reminder being required in commercial course of business and under reservation of asserting further rights. The purchaser may only set off undisputed or validly decided counterclaims.

## 3. Partial deliveries

Partial deliveries by us are permitted.

If partial deliveries are requested by the customer and are made against an existing order, the quantities of the partial delivery shall be deducted from the total order volume. Should the purchaser call quantities beyond the original order volume, we shall be entitled to cancel the excess quantities or to invoice them at the prices valid on the day of delivery. If possible, partial calls shall be made in identical time intervals and for identical quantities. Calls shall be made in good time within a period of 12 weeks so that faultless production and delivery are possible within the agreed delivery time, otherwise the delivery time shall be extended by a corresponding period.

## 4. Licences and approvals

The purchaser is obliged to obtain in good time all approvals required for performance of the contract including the approvals for monetary transactions. If the required approvals cannot be obtained within a reasonable period, we shall be entitled to withdraw from the contract by declaration to the purchaser after having granted a reasonable extension of time of at least 2 weeks.

## 5. Delivery time, delay in delivery

- a. The delivery time results from the agreements of the contract partners, if it is to be complied with by the seller all commercial and technical questions must have been clarified between the contract partners and the purchaser must have fulfilled all his obligations. If this is not the case, the delivery time shall be reasonably extended. This does not apply, if the seller is responsible for the delay.
- b. Compliance with the delivery period is based on the reservation that own deliveries are received correctly and in good time.
- c. The delivery period is deemed to be complied with, if the goods delivered have left the works of the seller until it expires or with the notice of readiness for dispatch. If an acceptance test has to be carried out, the date of the acceptance test is decisive, alternatively the notice of readiness for acceptance, unless acceptance is rightfully rejected.
- d. If dispatch and/or acceptance of the goods delivered are delayed for reasons the purchaser is responsible for, he shall be charged with the costs incurred owing to the delay starting one month after the notice of readiness for dispatch or acceptance.
- e. If non-compliance with the delivery time is the result of Force Majeure, industrial action or other events which are outside the sphere of influence of the seller, the delivery time will be reasonably extended. The seller shall inform the purchaser as soon as possible of the beginning and end of such circumstances.
- f. The purchaser may withdraw from the contract without notification of a deadline, if the total service becomes finally impossible for the seller prior to the passage of risk. Furthermore, the purchaser may withdraw from the contract, if for an order execution of a part of the delivery becomes impossible and he has a lawful interest in rejecting the partial delivery. If this is not the case, the purchaser shall pay the contract price accounted for by the partial delivery. The same shall apply in the case of disability on the part of the seller. Otherwise, section 9 applies.
- g. If the impossibility or disability occurs during the delay in acceptance or the purchaser is exclusively or mainly responsible for these circumstances, he shall be obliged to render a service in return.

- h. If the seller causes a delay and the purchaser sustains any loss due to the delay, he shall be entitled to claim lump-sum compensation. Compensation for delayed delivery for each full week of delay is 0.5%, however no more than 5% of the value of the given part of the total delivery which cannot be used on the intended date of application or as per agreement due to the delayed delivery. If the purchaser grants an appropriate deadline to the seller who is in delay for rendering the service taking into consideration the legal exceptions and if this deadline is not met, the purchaser shall be entitled to withdraw from the contract within the framework of the statutory regulations. Any further claims from delay in delivery are exclusively determined as laid down in section 9.

## 6. Passage of risk

Any risk of accidental loss or accidental impairment of the goods shall pass to the purchaser as soon as the goods are made available to the purchaser or with transfer to a forwarding agent or a carrier, at the latest, however, on leaving the supplier's plant. Should dispatch be delayed as a result of circumstances for which we are not responsible, the risk shall pass to the purchaser on the day of receiving the notice of readiness for dispatch. We shall only conclude insurance policies at the explicit request of the purchaser on his account. All agreements with reference to bearing the transport costs and the costs of insurance exclusively refer to the specified costs and shall not have any effect on the passage of risk, even if the application of Incoterms and Trade Terms has been agreed in this respect.

## 7. Examination and notice of non-conformity

Any existing defect recognisable in an acceptable examination must be reported in writing at the latest within 8 days after arrival of the goods at the location, any hidden defects must be reported immediately after detection. If special conditions have been agreed regarding the type of examination of the goods, this examination shall be performed in the manufacturer's plant. If in this case the purchaser fails to perform the examination of the goods in the factory in spite of notification of a deadline and instruction about the consequences, the goods shall be deemed approved on leaving the factory. All costs of the examination are to be borne by the purchaser.

## 8. Warranty

The seller shall grant warranty as follows for defects of quality and legal defects with the exclusion of any further claims and subject to section 9,

### Defects of quality

- a. All those parts shall be rectified free of charge or replaced by new parts at the discretion of the seller which are determined to be defective as a result of a circumstance occurring prior to the passage of risk. The seller shall be notified in writing immediately of the detection of such defects. Ownership of replaced parts shall pass to the seller.
- b. After consultation with the seller, the purchaser shall give the seller the required time and opportunity to carry out all repairs and replacement deliveries the seller considers to be necessary, otherwise the seller shall be relieved of the liability for consequences resulting therefrom. Only in urgent cases of a hazard to safe operation and/or to ward off disproportionately large damage shall the purchaser have the right to eliminate the defect himself or have it eliminated by third parties and to claim compensation for the necessary expenses from the seller; in such cases the seller must be immediately notified.
- c. To the extent the complaint proves to be justified, the seller shall bear the costs of the replacement part including dispatch as well as the reasonable costs of disassembly and assembly, and if this can be duly requested on the basis of the individual case, the costs of any required deployment of his fitters and assistants as the share of the costs incurred as a result of rectification and/or replacement delivery.
- d. Within the framework of the statutory regulations and taking into consideration the statutory exceptions, the purchaser shall have a right to withdraw from the contract, if the seller allows a reasonable time requested by the purchaser for the rectification or replacement delivery owing to a defect in quality to elapse without effect. In the case of a minor defect, the purchaser shall only be entitled to reduce the contract price. Otherwise the right to reduce the contract price remains excluded.
- e. No warranty shall be granted in particular in the following cases: Improper or inappropriate use, incorrect assembly and/or putting into service by the purchaser or third parties, natural wear and tear, improper or negligent handling, improper maintenance, unsuitable operating materials, faulty civil engineering work, unsuitable building site, chemical, electrochemical or electrical influences for which the seller cannot be held responsible.
- f. In the case of improper rectification by the purchaser or a third party, the seller shall not be liable for any consequences arising therefrom. The same shall apply for modifications of the goods delivered carried out without the prior consent of the seller.

#### Legal defects

g. Should the use of the goods delivered result in infringement of industrial property rights and copyright in the country, the seller shall procure at his own cost the general right for further use for the purchaser or modify the goods delivered in a way acceptable to the purchaser in order to ensure that no further infringement of industrial property rights exists. If this is not possible on economically appropriate conditions or in an appropriate time, the purchaser shall be entitled to withdraw from the contract. Under the above-mentioned conditions, the seller shall also be entitled to withdraw from the contract. Furthermore, the seller shall release the purchaser from any undisputed or validly decided claims of the owners of industrial property rights concerned.

h. The obligations of the seller laid down in section 8 shall be final subject to section 9 for the case of infringement of industrial property rights and copyright infringement.

They only exist, if:

- the purchaser informs the seller immediately of any claims made regarding industrial property rights and copyright infringements,
- the purchaser supports the seller in warding off the claims made in adequate scope and/or enables the seller to carry out the modification measures according to section 8 g,
- all defensive measures including settlement out of court are reserved for the seller,
- the legal defect is not based on an instruction of the purchaser and
- the infringement was not caused by the purchaser changing the goods delivered without authorisation or not using them in the manner specified in the contract.

#### 9. Liability

a. If the goods delivered cannot be used by the purchaser as laid down in the contract due to fault of the seller as a result of neglected or faulty implementation of suggestions and consultations prior to or after conclusion of the contract or by violation of other contractual accessory obligations, in particular instructions for operation and maintenance of the goods delivered, the provisions of sections 8 and 9 b shall apply accordingly with the exclusion of any further claims of the purchaser.

b. For damage not caused on the goods delivered themselves, the seller shall only be liable no matter which might be the legal reasons:

- in the event of wrongful intent,
- in the event of gross negligence on the part of the owner/managing bodies or executives,
- in the event of negligent injury to life, body, health,
- in the event of defects which he has concealed fraudulently or the absence of which he has guaranteed,
- in the event of defects of the goods delivered to the extent that according to product liability legislation, liability applies for damage to persons or property on privately used objects. In the event of negligent breach of major contractual obligations, the seller shall also be liable for gross negligence of non-executives and slight negligence, in such a case liability shall be limited to damage typical of the contract and reasonably foreseeable. Any further claims shall be excluded.

c. Force Majeure

Seller shall not be liable for any delay or failure to perform its obligations under any order or sales contract arising out of causes beyond its reasonable control (a "Force Majeure Event"), including, but not limited to, acts of God or public enemy, acts of other parties, acts of civil and military authority, epidemics, pandemics, unusually severe weather, shortage of power or fuel, strikes, lockouts, boycotts, or other labor troubles, government regulations, or delays of Seller's subcontractors or suppliers in furnishing materials, components, tools or supplies due to any one or more of the foregoing causes. In no event shall Seller be liable for any damages to Buyer caused thereby whether direct, indirect, special, incidental or consequential.

#### 10. Reservation of ownership

The goods delivered shall remain our property until full payment of any and all claims including those incurred in future, which we are entitled to as a result of the business relationship with the purchaser, regardless of the legal reason. The purchaser shall be entitled to use our goods as intended, to process them and to deliver and sell them like a reseller in the ordinary course of business. The Purchaser shall not be entitled to any other disposal of the goods supplied under reservation. If our goods are combined to form a single item with other objects by us on behalf of the purchaser or by the purchaser, it is agreed that the purchaser hereby grants the prorata coownership to us in the sense of Section 947 (1) BGB (German civil code) and holds the item in safe custody for us. If goods are sold for which we have rights of ownership in accordance with the above provisions, the purchaser shall irrevocably transfer at this moment the total claim, if co-ownership applies prorata from the purchase contract, which is at the basis, up to the amount of our residual claim. The purchaser shall be entitled to collect these claims as long as he fulfils his obligations towards us without any limitation. The purchaser shall immediately notify us by registered letter of any seizure, confiscations or other disposal by third parties and take all measure required to uphold our rights at his own cost. We undertake to release securities we are entitled to on the request of the purchaser at our discretion if their value exceeds the claim to be secured by 25%. In the case of open accounts the property subject to reservation of title shall serve as security for our payment balance claim. For the duration of reservation of ownership the purchaser shall be obliged to preserve the purchased goods in appropriate condition and to insure them against fire and theft; if requested by us also against machinery breakdown and to prove this to us as well as to transfer to us the claims against the insurance companies at our request.

#### 11. Right of rescission and other rights

In the case of a significant deterioration of the purchaser's economic and financial circumstances, if the purchaser pledges his warehouse, outstanding claims or sold goods or assigns or transfers ownership of them as security to other creditors or if the purchaser falls into arrears with major shares of his payments, we shall be entitled to require security and, if sufficient security cannot be registered, to make due the residual claim we have or to withdraw from the contract after having granted a reasonable extension of time.

The above provision shall also apply, if the purchaser dies, discontinues his business operations or transfers them to a third party. Should our residual claim not be paid, the purchaser's right of use for the goods supplied under reservation shall expire. We shall be entitled to request immediate handover of our property. Resumption of possession of the goods delivered shall not be deemed as withdrawal from the contract unless the Instalment Payment Act is applicable. The payment obligation of the Purchaser shall remain unaffected.

We shall be entitled to make the best possible use of the goods supplied in voluntary sale at the expense and for the account of the purchaser. The costs of resumption of possession and exploitation will be charged at a rate of 5% of the revenue from selling without special verification. Additional costs shall be verified. In the case of legal transactions in the sense of the Instalment Payment Act, we shall also be entitled to withdraw from the contract if the purchaser fails to pay an instalment. In such a case the compensation for use or any replacement for damage may be bindingly determined in an assessment by a sworn expert to be initiated by us. The compensation for use and the replacement for damage shall in this case be calculated as the difference between instalment price and estimated price. Any saved intermediate interests and financing costs shall be made good.

#### 12. Return deliveries

Return deliveries of any kind in principle require our consent and shall be sent in together with the completed form for return deliveries. Otherwise processing is not possible in our company and will result in them being returned to the customer with dispatch unpaid.

#### 13. Warranty processing

We reserve the right to have the equipment transported to our factory at Wuppertal, Germany, for assessment during the warranty period. Any and all warranty claims are based on regular maintenance and inspection of the equipment in compliance with the UVV accident prevention regulations.

#### 14. Choice of venue and place of fulfilment

German law shall govern the contractual relationship. Should individual terms of the contract be ineffective, the remaining contract shall not be affected. Place of fulfilment for both parties is 42329 Wuppertal, Germany. The legal venue is agreed to be Wuppertal in Germany as far as this is legally admissible. We use electronic data processing taking into consideration the Federal German Data Protection Act.

November 2020

**Columbus McKinnon Industrial Products GmbH**  
Yale-Allee 30 · D-42329 Wuppertal