

# GENERAL TERMS AND CONDITIONS OF STULZ GMBH

## Products division

**STULZ**

CLIMATE. CUSTOMIZED.

### I. General Information

1. Our deliveries and services to our contractual partner (hereinafter referred to as „customer“) are effected based on these General Terms and Conditions; we do not accept contrary or divergent conditions of the Ordering Party, unless we have explicitly agreed to their validity in writing.
2. These terms shall also apply to all future business dealings under the exclusion of contradictory terms and conditions. Any deviations, changes and ancillary agreements always require our written confirmation.
3. Our Terms and Conditions only apply towards entrepreneurs in the sense of Sec. 14 German Civil Code (BGB).

### II. Type and Scope of the Performances

1. Our offers are not binding. Our order confirmation or order shall be authoritative for the contractual content.
2. Our performance assurances are always made under the reservation of the ability to cover our own requirements and the correct and punctual self procurement.
3. The documents such as drawings and illustrations belonging to the offer are only approximately authoritative unless expressly marked as binding. We exclusively retain ownership to all property rights and copyrights to the offer and all documents; offers and documents may only be used for the purpose of executing the contract. They may not be passed on to third parties or duplicated.
4. The offer is made under the precondition that the media (water, air etc.) to be used when operating the systems to be supplied and installed are not aggressive.
5. We reserve the right to make technical alterations and partial deliveries as far as this is deemed to be reasonable for the customer in consideration of the mutual interests. This shall apply in particular to alterations for the purpose of improvements, future developments and adjustments to the most current state-of-technology. Alterations which reduce the value or the usability of the goods are excluded.

### III. Delivery and Execution Deadlines

1. A special written agreement shall be required to lay down delivery and execution deadlines.
2. Deadlines shall not begin before all commercial and technical prerequisites for executing the contract have finally been set. Deadlines shall furthermore not begin before we receive any authorisations or other documents to be obtained by the customer, nor before we receive any payment in advance agreed or the provision of an agreed letter of credit.
3. The execution deadline shall be deemed as having been met if the point of reception specified by the customer has been informed that the shipment is ready for dispatch.
4. If we are at default with the execution of performances our liability for damages pursuant to Sec. 286, 280 par. 1, 2 German Civil Code (BGB) in case of slight negligence caused by default shall be limited to 5 % of the net contract price.

### IV. Prices

1. The prices stated in the order confirmation shall apply. These do not include any taxes, customs duties and charges incurred which always shall be borne by the customer unless otherwise agreed.
2. We shall always be appropriately remunerated for any extra performance which we carry out on the instructions of the customer or in its interest.
3. For services provided more than four months after the conclusion of the contract, in case of any increases in wages or material prices arising after the offer was submitted we shall be entitled to adjust the prices accordingly.
4. For assembly, repair and service work the following shall apply: We invoice travel costs, daily allowances and working hours including the common surcharges for overtime, night work, work on Sundays and holidays. Preparation, travelling and waiting time shall be invoiced as work time. If the agreed performance is delayed for reasons for which we are not responsible, the customer shall bear all costs for the waiting time and for any additional necessary travel. If a service package is offered, the prices shall only apply on condition that we are contracted with all the services and that we can provide our services (delivery, assembly and commissioning) without any interruption.

### V. Payment

1. Invoices are due within 14 days of the invoice date without any discount unless otherwise agreed.
2. Any discounts agreed can only be deducted if all invoices belonging to a contract have been paid within the discount period.
3. The customer can only set off claims or assert a right of retention if said claims/rights are undisputed, have become res judicata or are approved by us.
4. If the customer does not pay as contractually agreed we shall be entitled to interest after due date and/or default interest to the amount of 9 percentage points above the basic rate of interest. Any further claims for damages which we are entitled to pursuant to the statutory provisions shall remain unaffected.
5. If the customer is at default in payment for more than two weeks, all unsettled accounts receivable are immediately due for payment including those which are not yet due or have been deferred. This does not apply if the payment the customer is in default with is to be considered marginal. This is the case if the payment the customer is in default with amounts to less than 5 % of those receivables not yet due. We are not committed to provide any further performance before payment has been received in full.
6. In the event of Sec. 321 German Civil Code (BGB) we are entitled to demand the immediate payment of services or products already rendered, or in the event of non-payment the return of the goods delivered, additionally for items still to be delivered and services still to be provided, payment in advance or the provision of collateral. The customer grants us right of removal.

### VI. Passage of Risk

1. Unless otherwise agreed our deliveries for sales contracts are executed ex works. Costs and risk of the transport as well as packaging costs shall be borne by the customer, whereby if there are no written instructions from the customer we shall determine the type of shipping and the shipping route to the best of our knowledge and without accepting any liability. The risk shall be transferred to the customer with the start of the loading work and at the latest with the transfer to the forwarding agent.
2. If the delivery of the products is delayed after our notification that the shipment is ready due to reasons for which we are not responsible, the goods shall be stored at the risk and cost of the customer.

### VII. Duty to Examine and to Complain about Defects

1. All details concerning the suitability, processing and use of our products, any technical advice and other details are made to the best of our knowledge; however this information does not release the customer from making its own inspections and examinations.
2. On receipt of the goods the customer shall examine them for faults without delay, if necessary by carrying out test runs. Any defects must be reported without delay.
3. We shall only be held liable for transport damages if we have expressly accepted the corresponding risk and are enabled to have recourse against the forwarding agent. In any case our liability assumes that the customer does everything required for recourse against the forwarding agent without delay and informs us accordingly. In particular, the customer is committed to give notice of externally visible damage upon delivery and to have the forwarding agent note these facts.

### VIII. Damages

1. We shall be liable according to statutory provisions if the customer claims damages based on deliberate intention or gross negligence on our part, including deliberate intention or gross negligence on the part of our representatives or agents or if we are in culpable breach of a material contractual obligation. Material contractual obligations are those which render possible the proper performance of contract in the first place and on the compliance of which the contractual partner usually relies and may duly rely. Unless we are charged with intentional breach of contract, our liability in the cases stipulated in this paragraph shall be limited to the damage that can be expected to occur under typical circumstances.
2. This shall not affect our liability for culpable violation of life, limb, or health; the same shall apply to our compulsory liability under the Product Liability Act (Produkthaftungsgesetz).

3. Further claims to damages beyond the liability stipulated in paragraphs (1) and (2) shall be excluded. This limitation of liability shall also apply if the customer claims indemnity for futile expenses in lieu of performance rather than indemnity for damages.

4. Insofar as liability for damages on our part is excluded or limited, such exclusion or limitation shall also apply to the personal liability of our employees, workers, staff members, representatives, and agents.

## **IX. Claims Based on Defects and Liability**

1. As regards liability for defects our Terms of Warranty shall apply in the currently valid version.

2. We shall accept no liability for any free-of-charge sales support measures (technical advice, drawing up plans and drafts, calculating heat requirements etc).

3. Assignment of any claims under the agreement, in particular assignment of claims based on defects, shall only be possible with our consent.

## **X. Retention of Title**

1. We retain ownership to all products supplied until payment from the business relationship has been fully received. In the event of a breach in contract by the customer, in particular if the customer is at default in payment, we are entitled to take back the products supplied and dispose of them freely. The customer herewith grants us a removal right.

2. As long as ownership is retained the customer is not allowed to pledge or to transfer the purchased items by way of security. In the event of any interference by third parties, for example by seizure or sequestration the customer shall immediately inform us in writing or by fax so that we can take legal action pursuant to Sec. 771 German Code of Civil Procedure (ZPO). If in case of seizure or any other interference by a third party such third party is unable to reimburse us for the court fees and other costs involved in a legal action pursuant to Sec. 771 German Code of Civil Procedure (ZPO), the customer shall be liable for the expenses we incur.

3. If products delivered are permanently attached to or merged with another object, the customer shall already in advance transfer to us co-ownership to the new object if as a result co-ownership results.

4. The customer is entitled to dispose of the products supplied by us in the normal course of business. The customer shall assign to us as collateral of all our accounts receivable from the business relationship, the accounts receivable from its clients gained from the sale or installation of the products supplied. We herewith accept the assignment. If the assigned claim becomes part of a current account, the customer assigns to us a part of the account balance (including the closing balance of the current account) corresponding to the amount of the claim already in advance. The customer shall only be entitled to dispose of the goods subject to retention if it is ensured that the receivables resulting thereof are transferred to us. We are entitled to demand information from the customer concerning which accounts receivable from which clients are affected by the assignment.

5. The customer shall retain the right to collect on its receivable even after the assignment. Our right to collect on the receivable ourselves shall not be affected by this. However, we commit ourselves not to collect on the receivable as long as the customer meets its payment obligations from the proceeds generated, is not in default of payment, and in particular as long as there is no petition to initiate insolvency proceedings or suspension of payments. If this is the case, however, we shall be entitled to require the customer to inform us about the assigned claims and the corresponding debtors, to give us all and any information required to collect the debt from them, to hand over all and any corresponding documents, and to inform the debtors (third parties) of the assignment.

6. The customer is committed to insure the products supplied against all standard risks. It shall herewith assign to us its corresponding claims in the event of damage. We herewith accept the assignment.

7. If the value of the collateral granted to us exceeds our total accounts receivable from the business relationship by more than 10%, we shall be willing to release or reassign on request of the customer. We shall decide freely which collateral shall be released.

8. If the retention of title or the assignment are ineffective pursuant to the statutory regulations applicable for the jurisdiction in which the goods are located, the surety that corresponds with the retention of ownership or the assignment in this area shall be deemed as agreed. If the creation requires the cooperation of the customer, upon request the customer is obligated to the extent which may reasonably be expected to take all measures at its own expense as are necessary for the justification and sustaining of such rights.

## **XI. Retention Right – Rescission**

1. The regulations nos. (EC) 2580/2001 and (EC) 881/2002 (so called anti-terrorism-regulation) and diverse country-related embargo-regulations of the European Union (inter alia Regulation (EU) No. 961/2010 on restrictive measures against Iran) prohibit especially to make available directly or indirectly any funds or economic resources (each kind of financial assets) to natural persons or legal entities, organizations or facilities, who are listed in the annexes to the regulations (so called EU sanction list).

2. In case of reasonable suspicion that the customer is one of the persons, organizations or facilities listed in the sanction lists or provides such persons, organizations or facilities with assets or is controlled by one of them directly or indirectly we reserve the right to rescind the contract or to retain delivery until full clearance of the suspicion taking into account the reasonable interests of the customer. The customer is obliged to provide us on demand with any information we consider necessary to clear up the suspicions or respectively the underlying facts.

## **XII. Place of Jurisdiction, Applicable Law, Partial Ineffectiveness, Written Form**

1. The place of jurisdiction is Hamburg.

2. German law shall apply; the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

3. Any ineffectiveness of individual provisions shall not affect the effectiveness of the remaining provisions.

4. All agreements entered into between the parties have been stipulated completely in writing in the contract concluded between the parties including these Terms and Conditions and our Terms of Warranty.