General terms and conditions

1 General

1.1 All deliveries and services are subject to the following terms of sale and delivery.

1.2 Any other terms and conditions of the purchaser which are not explicitly agreed by the supplier are non-binding, even if not explicitly disagreed by the supplier.

1.3 All other agreements, alterations or supplementary agreements require written confirmation.

1.4 In case some regulations of these terms of sale and delivery should become invalid, this does not affect the validity of the remaining regulations. Both the purchaser and the supplier will replace the invalid regulations with new legal regulations that approximate the legal and commercial purpose as close as possible.

1.5 Place of fulfilment for all obligations arising directly or indirectly from this contractual relation, including the duty to pay, is the official office of the supplier.

1.6 Place of jurisdiction is the competent court responsible for the official office of the supplier.

2 Offers, scope of services and contract formation

2.1 All offers are non-binding.

2.2.1 The scope of services subject to contracts exclusively depends on the sales confirmation.

2.2.2 The supplier reserves the right to modify the design, the selected materials, the specification and type of construction even after sending the sales confirmation if these modifications do neither contradict with the sales confirmation nor the purchaser's specifications.

2.2.3 Part deliveries are permitted.

2.2.4 The purchaser is obliged to accept the deliverables irrespective of its liability and warranty rights.

2.2.5 All documents that form the basis of the offer or the sales confirmation, such as figures, drawings, specifications of dimensions and weights, do, usually, only refer to approximated values, unless otherwise specified as binding.

2.3.1 An order shall only be deemed as confirmed if it was confirmed in writing by the supplier, or alternatively with the delivery at the latest, of the products were to be delivered without prior sales confirmation. Orders already given are irrevocable.

3 Prices and payment conditions

3.1 The prices are ex factory excluding packaging and other freight charges. The supplier will obtain transport- and other insurances only on instruction by the customer and at the expense of the customer. Packaging is calculated at cost price and not taken back. All prices are without the respective legally valid VAT.

3.2 Additional costs due to changes requested by the customer after confirmation of the order will be charged to the customer.

3.3 Payments fall, if not otherwise agreed, due:
a) with deliveries: within 30 days upon shipping date of the invoice strictly net or within 10 days with 2 % discount.
b) with corrective maintenances, modifications, installations and any other services: immediately after invoicing and strictly net.

3.4 In the case of foreign transactions, the payment shall be made before delivery, differently from paragraph 3.3, unless otherwise a written agreement exsists.

3.5 In case of default on payment the customer will be charged interest at five percent on the outstanding amount and, once a reminder has been sent, four percent above the current discount rate of the Deutsche Bundesbank. The supplier reserves the right to make further claims in case of default.

3.6 Bills and cheques are only accepted for the purpose of payment and shall only be regarded as payment if unconditionally credited.

4 Transfer of perils

The supplier's obligation to supply shall be deemed as completely fulfilled and all perils shall be deemed as fully transferred to the purchaser as soon as the goods have left the production site or have been transferred to the train and/or a forwarding agent. The vendor is not liable for breakage occurring during transit. Shipments that arrive in defective condition are to be returned to the train and/or the forwarding agent prior to acceptance for the purpose of determining the defect.

4.1 As far as the parties have not agreed any fixed terms of acceptance, the purchaser is obliged to accept the delivery item within a period of 8 days upon notice completion.

4.2 In case the purchaser does not fulfil his aforementioned duties, the supplier is, irrespective of any further legal options, entitled to demand immediate payment, to store the delivery item on account and risk of the purchaser or deal with the delivery item in any other way and to deliver the purchaser at the next possible time. In these cases any risks concerning accidental perishing or accidental deterioration are transferred to the purchaser upon a notice indicating readiness for shipment.

5 Reservation of property rights

The goods supplied shall remain in the ownership of the seller unless the purchase price was completely paid, in the case of bills and cheques unless they have been paid. The seller shall be entitled to take back the goods in the case of delayed payment. However, the purchaser is entitled to deal with these goods based on properly conducted business management; in particular he is entitled to machine, process or sell them. In case goods which the seller still owns are sold in the course of ordinary business transactions of the purchaser without immediate payment, the

claim for consideration is transferred to the seller, without requiring any special act of transferral. Extraordinary court orders such as pledges, transfer of securities etc are forbidden on the side of the purchaser. In case any third parties should access or deal with goods under conditional sale, this shall immediately be notified by the purchaser to the seller.

6 Costs for cancellation and modification

In case the purchaser does not or only partially accept our shipment and / or service or delivery is not requested within the time period agreed, however at the latest two months after our notice indicating readiness for shipment, he has to bear any extra costs related to this. In this case, this does not apply to any pecuniary and / or indemnity claims which we are entitled to. In case, an order already confirmed by us is, subsequently, modified concerning its order details, we are entitled to charge modification costs.

7 Warranty

7.1 Defects of goods (delivered by the supplier) notified to the supplier within 6 months after putting them into service, but not later than 9 months after transfer of perils, may be corrected by the supplier at his own choice or delivers spare goods which he is entitled to even if his rectification was not successful. Defects need to be notified in writing to the supplier, in the case of apparent defects not later than 14 days after the goods were transferred to the purchaser, and with non-apparent defects immediately after they have been noticed. The purchaser is entitled to either rescind the contract or to reduce the price should the rectification and delivery of the spare goods fail. Spare and wear parts or parts for further processing must be checked by the purchaser immediately upon delivery and any defects need to be notified immediately. Defects detectable prior to installation or processing, are, after they have been processed or installed, not subject to any warranty claims.

7.2 In case the purchaser requests to check the delivered goods and finds a defect, for which the supplier would be liable pursuant to the aforementioned number 6.1, the purchaser has to bear all occurring costs if it turns out that there is actually no defect in place.

7.3 Any further claims of the purchaser, in particular due to consequential harm caused by a defect – as far as these do not result from any absence of assured characteristics – are excluded. This does not apply if the supplier has acted with wilful intent or gross negligence.

7.4 Costs for posting or returning any delivery items and its packaging are to be borne by the sender, unless otherwise agreed between the purchaser and the supplier.

8 Liability

8.1 Claims for damages on the side of the purchaser – irrespective of the legal ground, and even for ground of tortuous acts or for compensation of consequential losses – are excluded. This does not apply if the supplier has acted in gross negligence or with wilful intent or he is liable due to the absence of any assured characteristics.

8.2 In case the purchaser asserts any claims for personal injury or material damage based on the Product Liability Act, which go back to any deficiencies of the delivered items, the non-warranty clause does not apply.

8.3 The supplier shall not be liable for damages that arise from the following reasons: Inappropriate or improper use, incorrect installation or commissioning by the purchaser or any third parties, non-compliance with the operating instructions, incorrect or neglectful treatment and operation, natural wear, chemical, electrochemical or electrical influences, as far as they are not caused by wilful intent or gross negligence of the supplier, modifications or remedial actions not agreed.

8.4 The supplier is responsible for advice given to the customer, particularly on the use of the equipment, only if it is given or confirmed in writing.

9 Copyright

The supplier retains property rights over drawings, sketches, and cost estimates and all other documents supplied with all tenders and confirmations of order. The customer may use them only for agreed purposes and may not reproduce or distribute them to third parties without permission from the supplier. On request, these documents and all copies made of them shall be returned to the supplier.

Plöger Sensor GmbH
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