

General Terms and Conditions of Business, Delivery and Payment - Spaleck Oberflächentechnik GmbH & Co. KG

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1. General

- 1.1. These general terms of business, delivery and payment are part of all quotations and contracts of delivery of goods and services of Spaleck Oberflächentechnik GmbH & Co. KG (hereinafter called „seller“), also valid for already existing and for future business connections.
- 1.2. The content of the contractual relationship between the seller and the buyer (hereinafter called “parties”) shall be governed by the following order of precedence:
 - Written agreements
 - Verbal agreements, if these are confirmed in writing
 - The order confirmation of the seller
 - The present terms of conditions
 - Exclusively the law of the Federal Republic of Germany, with the restrictions and the additions as per clause 3
- 1.3. Deviating agreements and terms of conditions are only binding if they are confirmed in writing by the seller. Thus, the general terms and conditions of the seller apply exclusively.
- 1.4. In all other respects, we refer to our installation conditions, which apply to the performance of installation, commissioning, repair and maintenance services.

2. Offers, Conclusion of contract

- 2.1. Our offers are always subject to change and non-binding. Subject to prior sale.
- 2.2. In case of deviations between purchase order and order confirmation the content of the order confirmation will be decisive for the contract contents, unless the buyer objects in writing within 10 calendar days of receipt.
- 2.3. Documents belonging to the offer, such as pictures, drawings, information on weight, performance and consumer are only valid to a limited extent. Cost estimates, drawings and other documents remain ownership of the seller until conclusion of contract and must not be made accessible to third parties.
- 2.4. The buyer is bound 30 days to its purchase order, calculated from the date of receipt by the seller.
- 2.5. Changes, deviations and verbal agreements will be subject to a written confirmation by the seller.
- 2.6. If, after conclusion of contract, the financial circumstances of the buyer deteriorate significantly, the seller is entitled to demand that the buyer provide adequate security within a period of 14 calendar days in accordance with Sections 232 ff. BGB (German Civil Code). If the security deposit is not provided within the specified period, the seller is entitled to withdraw from the contract and to assert claims for damaged.

3. Import and Export Control

- 3.1. The relevant export and import control regulations within the meaning of this section include, in particular, but are not limited to, the Foreign Trade Act (AWG), the Foreign Trade Ordinance (AWVO), the currently valid EC Dual-Use Regulation (Regulation (EC) No. 428/2009 of 5 May 2009), all applicable country and person embargoes, including measures to combat terrorism (so-called anti-terrorism lists), the War Weapons Control Act (KrWaffKontrG) and the Act Implementing the Chemical Weapons Convention (CWÜAG), each in its current version, including all associated annexes, implementing provisions and supplementary regulations.
- 3.2. The seller undertakes to comply with all relevant foreign trade regulations when executing the contract – in particular when passing on the products purchased from the seller – and to get the necessary approvals on its own responsibility and on time. Should the seller be held liable by third parties as a result of a breach by the buyer, the buyer shall indemnify the seller against all claims and compensate the seller for all resulting damages.

- 3.3. In case of deliveries into countries outside from the European Union (third countries) it is the buyers' responsibility to get information on the applicable import and customs regulations and any necessary customs tariff numbers before placing an order. The buyer bears sole responsibility for the lawful import of the goods into the country of destination and for the proper processing of possible customs and tax procedures. Customs, taxes or other expenses that may be required – unless expressly agreed otherwise or governed by the applicable Incoterm – have to be borne in full by the buyer.
- 3.4. As soon as the buyer gets knowledge that there are prohibitions or approval requirements according to foreign trade regulations for the delivery of the ordered goods or machines, he is obliged to immediately inform the seller in writing and separately.
- 3.5. If an official approval is required for the delivery, the buyer undertakes to support the seller as best as possible with the application and to provide necessary information and documents completely and on time.
- 3.6. If the buyer violates any of the above obligations and the seller is therefore held liable by third parties or the delivery cannot be made, the seller is entitled to withdraw from the contract. Further claims, in particular for damages, remain unaffected by this.
- 3.7. If, after conclusion of the contract, a new or a stricter export restriction gets into force, that makes the delivery of the ordered goods or equipment impossible – for example due to an embargo – the seller shall also be entitled to withdraw from the contract.

4. Scope of Delivery Obligations

- 4.1. The written order confirmation is decisive for type and scope of supply. Catalogues, drawings, measurements and weight indications are only approximate information. With the sale of series items, we owe goods of the same type and quality, minor deviations from the ordered goods are considered approved.
- 4.2. The execution of the order is based on seller's drawings, layouts, respectively, which are passed on to the buyer latest after technical clarification of the parties. Possible requests for change by the buyer must be communicated in writing within 30 days. If the seller expresses such requests for change the contract must be renegotiated.
- 4.3. Any earthworks, concrete work, chiselling or other masonry work that may be required, as well as the installation of the necessary electrical, water or compressed air connections, are not included in our delivery obligations.

5. Delivery Period, Right of Withdrawal

- 5.1. Agreed delivery and service periods are only binding if these are confirmed expressly by the seller.
- 5.2. Delays of deliveries or services for which the seller is not responsible – in particular labour disputes, fire and cases of force majeure and impediments to performance through no fault of the seller or its suppliers – shall extend the delivery period accordingly. The buyer may withdraw from the contract at the earliest six months after expiry of the originally agreed fixed date. In this case, claims for damages by the buyer – regardless of the legal basis – are excluded.
- 5.3. If the seller does not deliver for any other reason, the buyer may declare withdrawal, however, only assert a claim for damages in cases of intent or gross negligence. Possible claims for damage resulting from delay in delivery will be limited to 5 % of the contract price, if, due to intent or gross negligence action is taken required by law.
- 5.4. Delay in payment and/or circumstances relating to the buyer which appear to jeopardise the security of the purchase price claim, the claim for remuneration for work performed or other claims of the seller entitle the seller, without prejudice to his statutory rights of withdrawal, to withdraw from the contract and to assert his rights under the retention of title agreed below or to claim damages for non-performance. The seller is also entitled to make the fulfilment of the contractual obligations dependent on the buyer providing security or to withdraw from the contract.

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6. Transfer of Risk, Acceptance

6.1. Basically, the transfer of risk takes place ex works of the seller. Deviating Incoterms must be agreed separately in point 1.2., whereby the following rules become valid in case of international deliveries:

- DDP (Delivered Duty Paid):
In case of an agreed delivery term DDP it is basically the seller who takes responsibility for the import and tax clearance in the country of destination. If, after contract conclusion, there are changes of the legal or customs-related frame conditions (e.g. due to new import taxes, taxes or other costs), the seller reserves the right to pass these costs on to the buyer, unless these have been predictable and are significantly exceeding the originally calculated costs.
- DAP (Delivered at Place):
In case of delivery DAP the timely and proper processing of all import, tax and official formalities is the responsibility of the buyer. Possible costs, produced by delays in import – in particular demurrage charges, storage charges or additional costs for deviations or intermediate storage – are borne by the buyer.

6.2. The risk of accidental loss of the ordered items shall pass to the buyer at the time of delivery. If items are shipped to the buyer at the buyer's request, the risk shall pass to the buyer upon delivery by the seller or by a third party commissioned by the seller. In the event of any returns made with the seller's consent, the buyer shall bear the risk.

6.3. Upon completion of the system, the buyer shall, at the seller's request, either personally or through an authorised representative, accept the system within 10 days. This shall be done by confirmation of the assembly based on assembly reports. Reservations regarding any defects must be made in writing.

6.4. In case of non-acceptance of the equipment despite the seller's request, the equipment shall be deemed to have been accepted at the end of the tenth day after request, and the acceptance shall be deemed to have taken place.

7. Warranty

7.1. The seller takes over the warranty for the system delivered and/or assembled by him according to the statutory provisions.

7.2. The warranty period is 12 months, however, max. 15 months upon readiness for shipment, if there are delays, the seller is not responsible for. Deviating warranty periods must be agreed separately in point 1.2.

7.3. The seller shall not be liable if the defect is due to the fact that the buyer, its agents or vicarious agents provided faulty materials, tools, equipment or inaccurate plans, or if the defect is attributable to the buyer's express instructions.

7.4. All warranty claims shall not be applicable anymore, if the buyer or an authorized third person makes changes on the delivered object.

7.5. The warranty claims of the buyer are basically limited to his right, to claim for subsequent performance. However, the buyer reserves the right, after three times unsuccessful try for subsequent performance, to reduce the purchase price or the cost of labour or to withdraw from the contract.

7.6. The buyer must report in writing possible – obvious defects latest within 2 weeks after occurrence. No liability shall be accepted if defects are not reported in good time. The same applies if defective items are resold, parts are removed from rejected or defective shipments, or such goods are modified by third parties or by installing parts of third-party origin.

7.7. If the buyer claims transport damage, a certificate from the forwarding agent or carrier, the railway or post office confirming the damage incurred is required. For the purpose of the complaint, the damage certificate must be submitted to the seller together with a declaration of assignment regarding all claims against the transport company or other party responsible for the damage.

8. Price, Payment Conditions

8.1. The prices in the order confirmations are – if not agreed different – fix for 4 months, calculated from the date of the order confirmation. Should important cost factors change after expiry of this period until the point of time of delivery the seller has the right to change the prices accordingly.

8.2. The seller reserves the right to change the prices accordingly, if after conclusion of the contract, cost increases occur, in particular due to wage agreements or material price changes. The seller is obliged to act in the same way in case of cost reductions.

8.3. The agreed prices are net prices, discount or other reductions will not be granted. The following payment terms are valid, unless there are deviating agreements:

- For machines and systems as well as spare parts packages:
 - 30 % with order, 10 days net
 - 60 % before delivery, latest with readiness for shipment
 - 10 % after commissioning, 10 days net, latest 60 days upon delivery in case of delay the buyer is responsible for (if there is no commissioning through our service, 30 days net after arrival date)
- For services or single spare parts (repairs, maintenance, trainings, etc.):
 - 30 days net (invoicing after delivery works Spaleck / after effected service)
- For processing media:
 - 30 days net (invoicing after delivery works Spaleck / after effected service)

8.4. The date on which the amount due is credited to the seller's account shall be decisive for compliance with the payment deadline.

8.5. Cheques for payment are only accepted by the seller. Bank fees are borne by the buyer.

8.6. The buyer may only assert a right of set-off or retention on the basis of an undisputed or legally established counterclaim.

8.7. The seller's invoices are due for payment within 2 weeks from date of invoice, unless otherwise agreed. In the event of default of by the buyer, the seller is entitled to charge default interest in the amount of 5 % per year above the respective base rate of the ECB.

9. Retention of Title

9.1. Until the complete payment of all claims including interest and cost, the purchased objects remain the property of the seller. During the retention of title, the buyer must immediately notify the seller of the destruction, the damage or the seizure of the object of purchase as well as its transfer to another place.

9.2. If goods subject to retention of title are processed by the buyer into a new item, the processing shall be carried out for the seller without the latter being obliged to do so. The new item shall become the property of the seller. If processed with other goods subject to retention of title, the seller shall acquire co-ownership of the new item in proportion to the value of the goods subject to retention of title to the other goods at the time of processing. The same shall apply in the event of combination, mixing or blending.

9.3. If goods subject to retention of title are sold by the buyer, the buyer hereby assigns to the seller, who accepts the assignment, all claims arising from the resale in the amount of the value of the goods subject to retention of title, including all ancillary rights.

9.4. If goods subject to retention of title are installed by the buyer as an essential component in the property of a third party, the buyer hereby assigns to the seller, who accepts the assignment, the claims for remuneration arising against the third party or the party concerned in the amount of the value of the goods subject to retention of title, including all ancillary rights. If the goods are installed on the buyer's property, the buyer shall, in the event of the sale of the property, assign the resulting claim in the amount of the value of the goods subject to retention of title, including all ancillary rights, to the seller, who shall accept the assignment.

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9.5. If the value of the seller's security interests exceeds its claim by more than 20%, the seller shall, at the buyer's request, release the excess security interests at its discretion.

10. Liability

10.1. Regardless of other conditions of this agreement, the seller is exclusively liable for damages, due to intentional or grossly negligent conduct on the part of the Seller, its legal representatives or vicarious agents. A liability for damages caused by simple negligence, is excluded. This liability restriction does not apply for damages injury to life, limb or health, as well as in cases where an expressly warranted characteristic is missing.

10.2. Claims by the buyer or third parties under the Product Liability Act remain unaffected by the above provisions.

10.3. The seller is obliged to notify the buyer immediately in writing of any damage or loss – initially stating the reason and then promptly providing details of the amount. If the buyer fails to provide this notification, they shall be liable to pay damages to the seller.

11. Rights of Use Software

11.1. If the software is part of the scope of delivery, the buyer gets a simple, not transferable and not exclusive right to use the provided software including the related documentation. This use is exclusively permitted for the object of delivery foreseen. An installation or the use with different systems if forbidden.

11.2. The buyer is only entitled to reproduce, to treat, to translate or to change the object code into a source code within the legally permitted scope as per §§ 69a ff. UrhG Any further use is subject to the previous, expressly and written consent of the seller.

11.3. The buyer undertakes to keep unchanged manufacturer's markings, in particular copyright notices nor to remove or to modify without expressly consent of the seller. All further rights on the software and the documentation, including all copies, remain with the seller or the respective manufacturer of the software. The granting of sublicences or other transfer to third parties is not allowed.

12. Confidentiality

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13. General Provisions

13.1. The contract parties accept that all agreements in connection with this contract are only valid in writing. This also concerns ancillary agreements, assurances as well as subsequent changes or supplements of the contract, unless agreed different in writing.

13.2. Any assignment of rights, obligations or claims of the buyer arising from this contract to third parties requires the prior written consent of the seller. This consent may not be refused without objective reasons.

13.3. Place of performance for any duties arising from the concluded purchase or service contract is Bocholt, unless agreed expressly different.

13.4. If there are prerequisites for a jurisdiction agreement in accordance with section 38 of the Code of Civil Procedure, the place of jurisdiction for all claims of the contracting parties, including cheque claims, shall be Bocholt.

13.5. If a clause of these general conditions of business becomes partially or completely invalid or unenforceable, the remaining provisions shall remain unaffected by this. The contract parties undertake to replace an invalid or unenforceable provision with one that comes as close as possible to the economic purpose of the original provision.

