

## of ARI-Armaturen Albert Richter GmbH &amp; Co. KG

## and Armaturenwerk Halle GmbH

**Terms of Sale and Delivery.****I. General Aspects – Applicability**

- (1) Our Terms of Sale and Delivery apply exclusively, and we do not accept any such terms applied by the Customer that are contradictory to or deviate from our own unless we have specifically acknowledged their validity in writing beforehand. Our Terms of Sale and Delivery shall prevail even in the event that we unconditionally deliver ordered goods to the Customer in the knowledge that the terms and conditions applied by the latter are contradictory to or deviate from ours.
- (2) Any and all agreements concluded between ourselves and the Customer for the purposes of execution of this contract have been laid down herein.
- (3) Our Terms of Sale and Delivery apply only in relation to companies coming within the scope of Article 310 Paragraph 1 of the German Civil Code (BGB).

**II. Tender – Tender Documents**

- (1) Orders qualifying as tenders in accordance with Article 145 of the German Civil Code (BGB) may be accepted by our company within two weeks.
- (2) We reserve the proprietary and industrial property rights to pictures, drawings, calculations and any other documents, including those marked as confidential, that we might make available in respect of tenders and otherwise. Such material may not be passed on or made available to third parties unless we have given our express, written consent beforehand.

**III. Prices – Terms of Payment**

- Unless otherwise specified in our order acknowledgement, our prices apply as ex works and exclusive of packaging. Packaging is charged for separately.
- (2) The statutory value added tax is not included in our prices, and is shown separately on the corresponding invoice to the amount required by law on the date of invoicing.
  - (3) Invoices are to be paid within 8 days as from date of invoice subject to 2 per cent cash discount or net within 30 days. The Customer may only make use of said cash discount option if all other claims arising from our delivery of goods have been settled at the time of payment and if the invoice for which the cash discount option is being made use of is paid in its entirety within the aforementioned discount period.
  - (4) The consequences of default in payment shall be subject to the relevant statutory provisions.
  - (5) The Customer may only be entitled to offsetting if his counter-claims have been legally or undisputedly established or acknowledged by our company. In addition, the Customer may only exercise a right of retention to the extent that the counter-claim in question is based on the same contractual relationship.
  - (6) Increases in raw material prices and wages of more than 10 per cent during the period between conclusion of contract and the time of delivery shall entitle us to raise the price of the ordered goods accordingly. Any customs duties, inspection fees, exchange rate compensation and any other fees and charges required under public law shall be borne by the Customer.
  - (7) Payment by means of bills of exchange and cheques shall be on account of performance. We shall be entitled to refuse acceptance of cheques.

**IV. Delivery Period**

- (1) The delivery period we indicate shall commence as from when all technical issues have been clarified.
- (2) Compliance with our obligation to deliver shall be subject to the punctual and proper fulfilment of the Customer's obligations. In this respect we reserve the right to exercise the plea of non-performance of contract.
- (3) In the event that the Customer falls into default in acceptance or culpably breaches the contract in terms of any other duties to cooperate, we shall then be entitled to demand compensation for any damage arising therefrom, including any extra expense that might be incurred. In such instance we reserve the right to assert further claims.
- (4) In such instance that circumstances exist as described in Paragraph 3 of this Article the risk of the accidental loss or chance deterioration of the object of sale shall then pass to the Customer at that point of time when the latter falls into default in acceptance or payment.
- (5) The extent of our liability shall be governed by the relevant statutory provisions insofar as the contract of purchase in question constitutes a firm deal within the scope of Article 286 Paragraph 2 Su-section 4 of the German Civil Code (HGB) or Article 376 of the German Commercial Code (HGB). We shall also be liable under the relevant statutory provisions in the event that the Customer should be justifiably entitled to assert loss of interest in the further fulfilment of the contract as result of a delay in delivery for which we are responsible.
- (6) We shall likewise be liable under the relevant statutory provisions if the delay in delivery for which we are responsible is due to any wilful or grossly negligent breach of contract on our part. In such cases we shall bear liability for any fault of our representatives, vicarious agents or subcontractors. In such instance that the delay in delivery does not result from any wilful breach of contract for which we can be held responsible, our liability for damages will then be limited to cover only those damages that are of a foreseeable and typically occurring nature.
- (7) We shall likewise be liable under the relevant statutory provisions if the delay in delivery for which we are responsible is due to the culpable violation of an essential contractual obligation. In such event our liability for damages will then however be limited to covering only those damages that are of a foreseeable and typically occurring nature.
- (8) Acts of God, strikes, blameless incapacity on our part or on the part of our suppliers, as well as any delayed deliveries of essential raw or construction materials for which we cannot be held responsible shall extend the delivery period by the duration of the respectively involved hindrance. In the event that such delay exceeds one month then the Customer shall have the right to withdraw from the contract. In such instance the Customer may not assert any claim for damages.
- (9) In the event of delay in delivery we shall in other respects be liable for payment of a flat-rate amount for delay in performance to an amount of 3 per cent but no more than a total 15 per cent of the delivery value for each completed week of delay.
- (10) Further statutory claims and rights of the Customer shall be reserved.

**V. Transfer of Risk – Costs of Packaging**

- (1) Unless otherwise specified in our order acknowledgement, delivery of ordered goods takes place ex works.
- (2) With the exception of pallets, we shall not take back any transport packaging or any other form of packaging within the scope of the German Packaging Ordinance. The Customer shall be responsible for arranging and paying for the disposal of such packaging.
- (3) At the Customer's request we will take out insurance to cover the transport of the ordered goods, with the associated costs being for the Customer's account.

**VI. Liability for Defects**

- (1) Claims asserted by the Customer in respect of defects shall be subject to the proviso that the Customer has duly met the relevant obligations to inspect the goods in question and the requirement to give notice of defects in accordance with Article 377 of the German Commercial Code (HGB).
- (2) If it is established that the object of purchase is defective the Customer shall then be entitled to select between having said object repaired, reworked or replaced by a new and fault-free object. In the case of repair or reworking we shall be obliged to bear all outlay and expenses incurred for the purposes of eliminating the defect, in particular transportation, travel, working and material costs, to the extent that such expenses are not made higher due to the object of purchase having been taken to a location other than the place of fulfilment.

- (3) Should the aforementioned corrective measures fail, the Customer shall then be entitled to select between withdrawal from the contract or reduction of the purchase price.
- (4) We shall be liable under law in the event that the Customer asserts a claim for damages based on wilfulness or gross negligence on our part as well as on the part of our representatives, vicarious agents or subcontractors. This liability to pay damages shall not go beyond covering foreseeable, typically occurring damage if we are not charged with wilful breach of contract.
- (6) If the Customer is entitled to compensation for the damage rather than the payment then, notwithstanding Paragraph 3 of this Article, our liability shall in such case not go beyond covering foreseeable and typically occurring damage.
- (7) Liability in respect of culpable damage to life, body or health shall remain unaffected by the above. This shall also apply in respect of binding liability under the German Law on Product Liability.
- (8) Liability shall be excluded in instances not covered in the above provisions.
- (9) The statutory period for the assertion of claims arising from defects shall be 12 months as from transfer of risk.
- (10) The statutory period applicable in the case of assertion of claims relating to delivery under Articles 478 and 479 of the German Civil Code (BGB) shall apply notwithstanding and shall be five years as from the return of the defective object.

**VII. Joint and Several Liability**

- (1) Any liability for damages beyond the extent laid down in Article VI. shall be excluded, irrespective of the legal nature of the claim being asserted. This particularly applies to claims for damages based on culpa in contrahendo, the violation of other obligations or to tortious claims for compensation in respect of material damage under Article 823 of the German Civil Code (BGB).
- (2) Insofar as liability for damages on our part is excluded or restricted, this shall also apply as regards personal liability for damages on the part of our staff as a whole, our representatives and vicarious agents or subcontractors.

**VIII. Taking Back of Goods**

Any taking back of series-produced valves shall take place on the basis of written agreements to such effect. The value of such goods will then be credited subject to deduction of a contribution towards the cost of reworking such valves. As a rule, the take-back costs amount to 40 per cent of the order value, however no less than EUR 250. Any additional inspection and reworking costs will be invoiced for separately. All return consignments in such instances shall be delivered free domicile. Individual and replacement parts, accessories and valves which are no longer in production will not be credited.

**IX. Reservation of Ownership**

- (1) We herewith reserve our proprietary rights to the object of purchase until we have received all payments due on the basis of the contract of delivery. Any breach of contract on the part of the Customer, in particular default in payment, shall entitle us to repossess the object of sale. Such repossession of the object of sale on our part shall not constitute withdrawal from the contract unless we specifically declare this to be the case in writing. Seizure of the object of sale on our part shall in all cases constitute withdrawal from the contract. Having repossessed the object of sale we shall then be entitled to sell it and the proceeds therefrom shall, following deduction of reasonable realisation costs, be offset against the amount owed to us by the Customer.
- (2) The Customer shall undertake to treat the object of sale with due care, and in particular shall take out and pay for adequate insurance at value when new to cover it against theft and damage by fire and water. The Customer shall duly arrange and pay for any maintenance work or inspections that might prove necessary.
- (3) The Customer shall inform us without delay in the event of seizure or any other intervention by a third party so we can then institute legal proceedings under Article 771 of the German Rules of Civil Procedure (ZPO). The Customer shall be liable for any judicial or extrajudicial costs that we might incur in such instance under Article 771 of the ZPO in the event that the third party involved is unable to reimburse us for such costs.
- (4) The Customer shall be entitled to sell the object of sale within the orderly course of business. However, in such instance the Customer shall assign to us all relevant claims to the amount of the final invoice amount (incl. value added tax) due to us that arise from said sale, regardless of whether the object of sale is resold with or without conversion. Even after said assignment the Customer shall remain entitled to collect the claims involved, though our right to collect such receivables ourselves shall remain unaffected. However, we undertake not to collect such claims as long as the Customer meets the respective obligations in respect of the proceeds of the aforementioned sale, does not default in payment and in particular does not become subject to application for bankruptcy, composition or insolvency proceedings or to commercial failure. If however any such event should occur then the Customer shall notify us of the assigned claims and the debtor(s) involved, provide us with all details required for the collection of said claims, hand over to us the relevant documents and notify said debtors (third parties) of the assignment in question.
- (5) Any processing or conversion of the object of sale by the Customer shall in all cases be authorised by and performed on our behalf. Should the object of sale be processed with other objects that do not belong to us then co-ownership of the new object shall fall to us in proportion to the value of the object of sale – i.e. the final invoice amount of the object of sale including value added tax – against that of the other processed objects at the time of the processing. In other respects the object resulting from such processing shall be subject to the same provisions in terms of reservation of ownership as the delivered object of sale.
- (6) Should the object of sale be inseparably combined with other objects that do not belong to us then co-ownership of the new object shall fall to us in proportion to the value of the object of sale – i.e. the final invoice amount of the object of sale including value added tax – against that of the other combined objects at the time of the process of combination. If said combination is such that the Customer's resultant object is to be regarded as the principal object then it shall be regarded as having been agreed that the Customer assigns to us proportionate co-ownership thereof. The Customer shall retain the resultant sole ownership or co-ownership on our behalf.
- (7) The Customer shall also assign to us the claims for securing the claims due to us from the Customer that arise vis-à-vis a third party as result of the object of sale's combination with a plot of land.
- (8) We herewith undertake to release at the Customer's request the securities to which we are entitled if the realisable value of our securities exceeds the value of the claims to be secured by more than 10 per cent. It shall be up to us to decide as to which securities are to be released in such instance.

**X. Places of Jurisdiction and Fulfilment**

- (1) If the Customer is a registered trader the place of jurisdiction shall be the court to the jurisdiction of which our principal place of business is subject. We shall however also be entitled to initiate legal proceedings at the court to the jurisdiction of which the Customer's domicile is subject.
- (2) The law of the Federal Republic of Germany shall apply. Application of the United Nations Convention on Contracts for the International Sale of Goods shall be excluded.
- (3) Unless otherwise stated in the order acknowledgement, the place of fulfilment shall be our principal place of business.