

# General Terms and Conditions of delivery of Maurer-Atmos Middleby GmbH

## 1. Origination of the contract, rights to contractual documents

- 1.1 Quotations from the firm of Maurer-Atmos Middleby GmbH, hereinafter called "Supplier", shall be subject to change without notice, unless otherwise agreed. Documents forming part of the quotation, such as illustrations, diagrams, weights and dimensions, shall only be approximately decisive.
- 1.2 Orderer shall be bound by its order. Supplier can accept the latter within 3 months.
- 1.3 Supplier reserves ownership and copyrights to estimates, diagrams and other documents. The documents may not be made accessible to third parties, even if an order has been placed.

## 2. Written form, general terms and conditions of business of Orderer

- 2.1 Side-agreements, supplements and amendments to the contract shall only be binding for Supplier if it has confirmed them in writing, unless Supplier has waived this requirement of written form in writing.
- 2.2 The aforementioned shall also in particular apply for Orderer's general terms and conditions of business.

## 3. Scope of delivery

- 3.1 For the scope of delivery, the written order confirmation or declaration of acceptance from Supplier shall be decisive.
- 3.2 Technical information shall be understood with the tolerance customary in the branch, albeit no less than  $\pm 5\%$ . Supplier may make technical amendments for adaptation to the state of the art up to delivery.

## 4. Prices

- 4.1 If no specific agreement has been made, the prices plus statutory Turnover Tax applicable at the time shall apply ex works including loading in the works, albeit excluding packaging, to the extent that nothing to the contrary has been agreed.
- 4.2 The prices for assembly shall apply, taking once-off costs of travel to the site and back into account. Insofar as waiting periods or other delays occur through no fault of Supplier and repeated travelling times are necessary, they shall be charged separately per man and hour on the basis of the proofs of time and the costs of travelling and stays.
- 4.3 Errors in spelling, arithmetic, information or calculation in quotations, order confirmations or invoices from Supplier can be corrected at any time if they become known. For the event of errors in catalogues, price lists, quotations, order confirmations, invoices etc., Supplier reserves the right to carry out a correction and possible subsequent charging.

## 5. Payment

- 5.1 With a lack of specific agreement, payment shall be made as follows:
  - one-third down-payment on the total price after receipt of the order confirmation,
  - one-third payment on the total price after notification of readiness for dispatch of the essential parts of the delivery,
  - remaining contractual sum after completion of assembly, albeit no later than 30 days after notification of readiness for dispatch of the essential parts of the delivery.

## 6. Right of rejection of service, offsetting

- 6.1 Rights of rejection of service or the right to offsetting shall only accrue to Orderer if the claim being made is undisputed or legally effective. This shall not apply with regard to the contractual remuneration if Orderer has made payments to the amount of the actual value for a defective delivery.

## 7. Delivery dates, arrears

- 7.1 The delivery period shall not commence before the preliminary services for which Orderer is responsible, such as production of documents, plans, approvals etc. or also due payments.
- 7.2 The delivery period shall be complied with if the object of delivery has left the works or readiness for dispatch has been notified by its expiry.
- 7.3 Circumstances for which Supplier is not answerable shall not be ascribed to Supplier, even if they come about during arrears already in existence. The start and end of such preventions shall be notified to Orderer by Supplier as soon as possible in important cases.
- 7.4 If dispatch is delayed at Orderer's request, it shall be charged the costs incurred by the storage, albeit no less than 0.5 per cent of the value of the stored delivery for each month in the event of storage in Supplier's works, starting one month after notification of readiness for dispatch. However, Supplier shall be entitled to dispose of the object of delivery otherwise after a fruitless expiry of a suitable period and to supply Orderer differently with a further suitable period.
- 7.5 In the event of call orders without fixed agreement of a delivery period, Orderer shall call the delivery from Supplier no later than six months from the date of conclusion of the contract. After the expiry of said period, Supplier shall be entitled to implement delivery immediately.
- 7.6 A delivery period of no less than three months, also a suitably longer delivery period of up to six months from receipt of the written call, depending on the size of the plant, shall be deemed agreed.

## 8. Freight

- 8.1 Supplier shall choose the means of transport. Transport shall be done at Orderer's risk and for its account.
- 8.2 Supplier shall not be liable for culpability of the companies entrusted with transport. However, it shall be obliged to assign claims to damage up to the amount of damage incurred by Orderer to the latter.
- 8.3 Packaging shall be charged at cost price and not taken back. The costs of a transport insurance shall be borne by Orderer. Transport damage shall be confirmed on the transport document and a record of the state of affairs made by the transporter. Costs of return transport of damaged goods and replacement delivery shall be borne by Orderer.

## **9. Passage of risk, insurance, acceptance**

- 9.1 The risk of chance destruction shall pass to Orderer with notification of readiness, albeit no later than dispatch of the delivery, even if part deliveries are made or Supplier has assumed further services, e.g. the costs of dispatch or transport and erection.
- 9.2 Upon request by Orderer, the consignment shall be insured against theft, breakage, transport, fire and water damage and other insurable risks by Supplier at Orderer's expense.
- 9.3 If dispatch is delayed for reasons for which Orderer is answerable, risk shall pass to Orderer from the day of notification of readiness for dispatch, but Supplier shall be obliged to apply for conclusion of insurances which Orderer demands at the latter's expense. Objects delivered shall be accepted by Orderer, even if they manifest essential defects, notwithstanding the rights accruing from Section 12. Part deliveries shall be admissible.

## **10. Retention of title**

- 10.1 Supplier shall reserve ownership of the object of delivery until receipt of all payments from the entire business relationship.
- 10.2 For the event of resale with a signed contract, Orderer shall assign all claims accruing to it from the resale to Supplier by way of security. Upon request by Orderer, Supplier shall release the securities lastingly exceeding the secured claims by more than 20 % at its option.
- 10.3 In the event of breach of contract by Orderer, in particular arrears in payment, Supplier shall be entitled to take back the object of delivery after a reminder, Orderer being obliged to hand it over. Claiming of right of retention and seizure of the object of delivery by Supplier shall not be deemed withdrawal from the contract.

## **11. Obligations to examination and notification of defects**

- 11.1 Notification of defects shall be done in writing within the meaning of § 127 German Civil Code.
- 11.2 Apart from this, § 377 German Commercial Code shall apply.
- 11.3 Supplier shall not be obliged to examine materials supplied by Orderer (also plans, data etc.) and to notify any defects. However, Supplier may not process obviously defective materials without indicating the defectiveness.

## **12. Warranty, guarantee**

- 12.1 As subsequent performance, Supplier can remedy the defect or supply a defect-free object at its option.
- 12.2 If subsequent performance repeatedly fails, failure also existing if the original defect is remedied, but the object is nevertheless defective, Orderer shall have the right to reduction of purchase price, §§ 437 no. 2, 441 German Civil Code, and to withdrawal from the contract, §§ 437 no. 2, 440 German Civil Code. Orderer's right to damages shall be based on the statutory provisions in accordance with the regulations contained under Section 14 of the present contractual terms and conditions.

## **13. Guarantee, procurement risk**

- 13.1 Without express reference, contractual agreements shall not contain any declaration of guarantee by Supplier as a matter of principle. Supplier shall bear no procurement risk.

## **14. Damages, reimbursement**

- 14.1 If an inconsiderable or considerable defect exists, Supplier's liability shall be limited to the foreseeable damage or expenditure typically occurring for damage to property and economic loss, insofar as it can prove that it is only liable for the breach of obligation through slight negligence.
- 14.2 Apart from this, Supplier's liability for damages or reimbursement shall be limited to cases of causing the damage by gross negligence or malice aforethought as a matter of principle.
- 14.3 The limitation of liability shall not apply:
  - a. in cases of culpable injury of life, limb or health (§ 309 section 7 a German Civil Code)
  - b. in assumption of a guarantee or assurance of properties
  - c. in culpable breaches of cardinal contractual obligations
  - d. to the extent that defects have been deceitfully concealed
  - e. in assurance of compliance with the delivery date or its guarantee
  - f. insofar as Supplier is in a position to receive coverage for consequential damage to objects other than the object of the agreement or other assets of Orderer within the framework of the existing company and product third-party liability insurance.
- 14.4 If the damage is based on a breach of a cardinal obligation by Supplier, its liability shall be limited to the foreseeable damage typically occurring with the proviso that it is only answerable for the breach of the obligation by slight negligence.

## **15. Barring by limitation**

- 15.1 Statutory barring of warranty, damage and reimbursement claims by limitation shall be eased to one year to the extent admissible. This shall not apply to the extent that Supplier has deceitfully concealed a defect or has assumed a guarantee or a procurement risk for the object of delivery. This shall also not apply to the extent that the claim has been caused by action of Supplier with gross negligence or malice aforethought. It shall further not apply to claims from the Product Liability Act, in culpable injury of life, limb or health.

## **16. Applicable law, contractual language, place of performance, place of jurisdiction, separability clause**

- 16.1 The legal relationship between Parties shall be governed by the law of the Federal Republic of Germany (excluding standardised purchase law). The contractual language shall be German. Likewise, negotiations and correspondence shall be held in the German language.
- 16.2 Place of performance shall be Supplier's registered office.
- 16.3 If Orderer is a merchant, a public-law legal entity or a public-law special fund, proceedings for all disputes resulting from the legal relationship shall be initiated at the Court which is responsible for Supplier's registered office of delivery from branches of Supplier. Supplier shall also be entitled to sue at Orderer's registered office.
- 16.4 If one of the aforementioned provisions is ineffective or unenforceable, the validity of the remaining provisions shall not be affected. Instead, Parties shall be obliged to come to a new agreement coming as close as possible to the ineffective or unenforceable one.