

**General Terms for the Sale and Supply of Valves, spare parts and the provision of services of  
H. Gäbler Armaturen GmbH & Co. KG ( 01/2012 )**

**§ 1 General Terms**

- (1) These terms of delivery and supply ( Allgemeine geschäfts- Verkaufs- und Lieferbedingungen ) do exclusively apply to all current and future business relations between H. Gäbler Armaturen GmbH & Co. KG as supplier and our customers. They apply for all quotations, order confirmations, deliveries and invoices for valves, parts and performance for valves. They're valid even if we don't explicitly refer to them in our order confirmation for future business. General Purchasing conditions of our customers that contradict, supplement or deviate from our terms do not apply unless we agree to them expressly in writing. These terms of business apply exclusively between legal entities as defined by § 310, Abs. 1 BGB ( German Commercial law code ).
- (2) Any deviation from these contractual provisions enter into force only if an authorized representative of the company management has agreed to it in writing.

**§ 2 Placement of order / completion of contract**

- (1) Our quotations are subject to change. They keep valid for the order confirmation under the prerequisite that the underlying conditions for the offer haven't changed. For the commercial invoice the prices of the order confirmation are binding. If not otherwise expressed explicitly the prices are net prices, subject to value added tax, if applicable. They are valid ex works, without taxes, freight or insurance fees and without packing costs. Quotations without time limit remain binding for three months.
- (2) The naming of dimensions, weights or other performance data as well as drawings or sketches in our catalog, in our quotations or in other publications is to be regarded as approximate and is non-binding, except otherwise expressed and confirmed in writing.
- (3) We reserve the right of authorship for quotations, drawings, diagrams, functional descriptions and other plans, recommendations etc. They must not be disclosed to third parties and have to be returned on request if there's no order or contract agreed.
- (4) Orders by the customer are only coming into force if they are either confirmed in writing within two weeks or if the ordered goods has been supplied within that period of time.
- (5) We deserve the right, even after order confirmation , to change the design, the materials or technical specifications, if this is in the technical advance or an improvement and reasonable for the customer.
- (6) We deserve the right to deny the delivery and to reject the order if, after the order confirmation, the solvency of the customer is in question or if the customer is listed on the Anti-Terror-list 1967 of the UN or coming from a country against which the EU or the UN has imposed an economic embargo. In the case of justified doubts about the solvency of the customer the company H. Gäbler Armaturen GmbH & Co. KG retains the right to demand prepayment or a bank guarantee for the payment .
- (7) In the event of the customer cancels the contract without our failure being the reason the purchaser has to compensate for the financial effort of the supplier. At least 10 % of the order value have to paid unless the customer can prove the financial damage to be lower. The company H. Gäbler Armaturen GmbH & Co. KG can insist to charge and to get paid substantial parts of the contract that have been manufactured or purchased solely for the contract in question and that cannot stocked or used for other customers or future business.
- (8) Our prices given in our order confirmation are fixed during the duration of the contract. If the material prices at the date of purchase of the raw materials or the wages at the date of delivery differ more than 10 % from the corresponding figures at the date of order confirmation we reserve the right to adjust the prices in the commercial invoice if this is reasonable for the customer.
- (9) If orders are made by the purchaser with reference on either an old previous commission or on a quotation whose validity period has expired the seller acclaims the right to raise the prices onto the actual level, without prejudice of an agreement as a gesture of goodwill.

**§ 3 Delivery and Performance**

- (1) Delivery and performance times start at the earliest with the order confirmation, presupposed that all commercial and technical aspects are agreed and the purchaser has fulfilled possible preconditions e.g. a prepayment. If the purchaser is in arrears with his contractual obligations the supplier reserves the right to suspend further processing of the order or the delivery until the agreed inputs were provided.
- (2) If not otherwise agreed in writing partial deliveries are permissible.
- (3) Unless otherwise agreed, the delivery shall be deemed met if the goods are shipped to the date promised by the manufacturer or is reported ready.
- (4) If there's incurred a financial loss to the purchaser due to late delivery, the purchaser is entitled to claim damages from the manufacturer, H. Gäbler Armaturen GmbH & Co. KG. This penalty payment is limited to a maximum of 5 % of the order value or – in case of a partial delivery – of the value of the delayed part of the delivery. The buyer has no right to further claims, in particular not for the reimbursement of lost profit
- (5) Unforeseeable and unavoidable events (war, warlike conditions, riot, civil commotion, sabotage, strikes, lockout, lack of energy or raw materials, etc.), grouped under "Force Majeure", release us for the duration of their existence from the delivery and performance period, even if when the delay occurred previously. The delivery and performance period shall then be extended for the persistence of the force majeure event. This also applies to events of the same type that occur with suppliers of key components that prevent us from proceeding with the order or from delivering in time. If such events are lasting for more than six weeks, each contract party has the right to cancel the order.

- (6) The purchaser has a right to withdraw from the contract if the supplier has expired a deadline by his fault and if the supplier was not able to fulfill his contractual obligations within a appropriate period for reworking measures. Furtheron the purchaser has the right to withdraw from the contract if the complete delivery or performance prior to the contractual passage of risk definitely gets impossible for the supplier and applies also for other events leading to the inability of the supplier to fulfill the contract.
- (7) If the valves or spare parts are announced to be ready for delivery in case of a routing order agreement the purchaser is obliged to give the order to collect the goods as soon as possible. If the purchaser doesn't arrange the transport the supplier is entitled to stock or to supply the goods in his sole discretion at the expense of the purchaser. With the announcement of readiness for delivery the goods is treated as delivered.

#### **§ 4 Payment**

- (1) Our prices are defined ex works, without packing and freight, excluding VAT. Relevant for the payment is the amount given in our commercial invoice including packing and freight charges, if the agreed conditions are not DAP acc. INCOTERMS 2010. The payment has to be done without deduction within 30 days from the date of invoice including the legal value added tax at the date of the invoice. This is subject to delivery against payment in advance or on the basis of a letter of credit or on the basis of a payment against documents.
- (2) The granting of discounts requires the consent of the supplier. The purchaser may only claim a discount if all other claims and demands of the supplier have been met for goods sold and if the unabridged payment is within the payment period for the discount.
- (3) If the purchaser is falling into arrears, the supplier may demand interest on arrears amounting to min. 5 % over and above the relevant basic interest rate of the European Central Bank. The assertion of higher penal interests and of a further damage for delay remains untouched from this.
- (4) Payments have to be made through bank transfer or cash. The acceptance of cheques and bills of transfer is only for payment reasons. The customer has to bear any costs and expenses involved. The outstanding arrears are dealt as paid only after irrevocable cashing by our bank.
- (5) If after confirmation of the order we become aware of circumstances that question or jeopardize the solvency of the customer, e.g. the opening of insolvency proceedings, we are entitled to demand payment in advance before delivery or a irrevocable bank guarantee or, if the delivery already has taken place, to demand immediate payment. If the customer can not provide the required additional guarantee or if he cannot pay the amount in advance we are entitled to withdraw from the contract.
- (6) The customer is only entitled of deducting, balancing or withholding, independent from complaints or possible counterclaims, if explicitly agreed by the supplier in writing or if the claims have been legally binding by a relevant court.
- (7) An assignment of claims from our customer onto third parties does only come into force if explicitly agreed by us in writing.

#### **§ 5 Passage of risk, acceptance**

- (1) For home deliveries the supplier is free to decide the mode of transport and packaging, if not otherwise agreed. The shipping of valves and spare parts or other goods in at the risk and the expense of the recipient., unless otherwise agreed.
- (2) Delivered goods shall, without prejudice to the rights of § 8, be accepted when exhibiting minor and insignificant defects.
- (3) The risk for the goods passes to the purchaser at the time the delivery is fulfilled according to the agreed conditions of the latest INCOTERMS. If the delivery is delayed without the fault of the supplier and if the announcement of readiness for dispatch was sent to the purchaser the risk passes to the customer with this announcement of readiness for dispatch. Upon request of the customer the loss or the the damage of the goods during the transport is insured at the purchaser's expense.
- (4) Apart from EURO-palletes and lattice pool boxes packaging are not returnable. The packing costs will not be refunded. If requested the packing will be treated and certified acc. IPPC standards for export purposes.

#### **§ 6 Guarantee**

- (1) The assertion of warranty claims requires that the customer is in full compliance with his statutory obligations to investigate the possible failure timely. The customer must provide a detailed description of the damage or of the event occurred. Especially for obvious shipping damages or shortages the claim has to be announced in writing within five working days after the receipt of the goods. Obvious transport damages must be handled with the carrier by the customer, provided the transition of risk is not agreed upon receipt of the goods according to the corresponding INCOTERMS declaration .
- (2) The warranty period is 12 months from the date of shipment. Other and longer periods are only valid if these have been agreed and confirmed in writing.
- (3) The warranty requires that the valves and spare parts supplied have been properly handled and installed. Targets are the installation and operation instructions, the technical data sheets and the sheets for the maximum bolt forces. If a defect or a failure is based on chemical, physical or thermal influences that go beyond the limits given in the technical data sheets and that have not been named by the customer and that have not been confirmed by us in writing the warranty is excluded. Furtheron the warranty is excluded for improper use, lack of maintenance, normal wear, modification of the delivery item, improper repair by unauthorized personnel or the use of non-genuine spare parts during the repair of the valves.
- (4) We deserve the right, depending on practicality, to demand to have the faulty item sent back to our factory for verification and repair or to demand access to the faulty item on site.
- (5) In case of minor defects or a negligible reduction of the suitability of the valve or the spare parts supplied the warranty is excluded.

- (6) If the delivered goods are defective we are either entitled to remedy the defect or to make a replacement. In the event of remedial measures we're obliged to assume the expenses, in particular costs for materials and labor and travel costs. The client in this case must ensure the accessibility of the defective valve and allow adequate time to correct the defect.
- (7) Defects in individual items of a delivery shall not entitle to reject the entire delivery
- (8) Presupposed the elimination of the defects is unsuccessful the customer can demand in accordance with the legal provisions reimbursement of his expenses or compensation for his damages, require reduction or rescind the contract. Moreover, the customer at our expense, provided such a replacement is proportionate, can fix the damage
- (9) Costs that are arising due to unjustified complaints are the sole responsibility of the customer and have to be borne by him.
- (10) The transfer of warranty claims to third parties is excluded.
- (11) We are not obliged to remove defects if the customer's payment obligations have not met yet. In such a case the customer is only entitled to withhold payments in a reasonable relation to the defect.

## § 7 Liability limitation

- (1) We are entirely liable for damages if our bodies or representatives act with intent or with gross negligence. In addition we are liable for the violation of essential contractual obligation, on whose fulfillment the customer can particularly rely on, even in cases of slight negligence. In cases of slight negligence of contractual obligations or in cases of intent or gross negligence by employees that do not have executive functions we are liable only for the damage, typically occurring, taking into account all relevant and evident circumstances foreseeable. Liability for consequential damages, especially lost profits or lost savings, other incidental damages or recorded data is excluded. The disclaimer also applies for possible third-party recourse to the customer, if due to delayed delivery or defective products damage claims are made to the customer.
- (2) The disclaimer applies for all claims for damages no matter what legal grounds they are based, except for damages to life and limb or health or for damages that result from the product liability law.
- (3) The aforementioned liability restrictions also apply in respect of the personal liability of our employees, workers, representative or other agents.

## § 8 Return of goods / hazardous ingredients

- (1) A collection of our valves or components is only possible for running series if we agree to it in writing, provided that the spare parts or in particular the valves taken back meet the applicable guidelines in its latest form. In particular the existence of material certificates that can be assigned to valves and that enable us to check the conformity with the pressure equipment directive 97/23 is necessary. The price for the valve or the spare parts is refunded to the customer, minus a fee for the processing, disassembly and re-stocking of the parts. The fee depends on the type and design of the valve. At least 250 € will be charged. No refund will be granted for the return of valves, spare parts or accessories, whose production is set.
- (2) Upon delivery of valves for repair or return of valves, the customer is obligated to comply with the Hazardous substances Ordinance in its latest version. In particular the customer must label and pack valves or spare parts that have come in contact with hazardous substances accordingly. With the repair order the contact with hazardous substances it must be pointed out clearly and, if possible and feasible, the corresponding MSDS acc. Guideline 91/155 must be attached.
- (3) We may refuse the acceptance and the repair at any time with a reference to dangerous substances if it comes to valves or parts that have not been manufactured by for the use in the hazardous substances in question. In this case we do not take any liability and the customer does not accrue any warranty claims.

## § 9 reservation of proprietary rights

- (1) Delivered goods remain our property until full compliance with all payment obligations out of the purchase contract. Until full payment, the customer also undertakes to treat the delivered goods carefully.
- (2) The customer is entitled to sell the goods supplied by us in ordinary business operation. In that case however he has to assign his payment claims towards his customer to us for the amount we've charged for the delivered goods with the invoice including the statutory value added tax. This applies until full payment of our customer's payment obligations. To collect the debt, the customer is entitled even after assignment to us, however our right to collect the receivables ourselves remains unaffected. We undertake, if our customer meets his payment obligations, not to collect the receivables ourselves as long as no bankruptcy or insolvency proceedings have commenced. In the event of such a procedure, the customer agrees to inform us about the receivables and their debtors. He has to provide with all necessary information to enable us to collect the receivables ourselves.
- (3) The customer is not entitled to transfer or to pledge reserved goods as securities. The customer is obligated to inform us promptly of the commencement of enforcement proceedings and he has to give us the opportunity to file an objection claim against it acc. §771 ZPO. All associated costs have to be born by the customer.
- (4) If our property goes under due to legal provisions or government expropriation the customer is obligated to transfer possible compensation claims to us amounting to the value of the invoice price of the reserved goods.
- (5) If the delivered reserved goods is mixed with other parts that are not our property, connected to or assembled with other parts into bigger indivisible units, the customer has to provide us with a co-ownership for the larger units in the amount of the worth of the goods we've supplied including the applicable value added tax. This applies until the full compliance with all payment obligations.
- (6) If we receive securities in order to fulfill the contract, we undertake to return them on the request of the customers without delay, provided the contract is fulfilled and all payment obligations have met. This also applies if the worth of the redeemable securities is more than 10 % above the worth of the hedged assets. The selection of securities to be released can be done by us freely.

## § 10 Place of jurisdiction, governing law and miscellaneous

- (1) Patent rights, copyrights and other intellectual property rights, that are embodied in the valves, parts or technical documentation supplied to the customer will not be transferred to the customer. The publication or dissemination of any plans, drawings, cost estimates, designs or other technical information provided by us to third parties without our permission in writing is prohibited. This also applies for the duplication of the documents or the disclosure to third parties.
- (2) The relevant German courts shall have exclusive national and international jurisdiction to settle all disputes which directly or indirectly arise out of contracts between the company H. Gäbler Armaturen GmbH & Co. KG and our customers which are subject to these General Terms ( AGB ). Provided that jurisdiction is not determined to another place due to statutory regulations the court associated to the location of our company shall be the place of jurisdiction. This anteceding clause also applies for non-contractual claims by the meanings of the EC regulation no. 864/2007. Irrespective of the above standing we are entitled to sue in the jurisdiction of the customer.
- (3) The contractual relationship between the company H. Gäbler Armaturen GmbH & Co. KG and our customers is based on the law of the federal republic of Germany. The Convention of the International sale of Goods ( CISG – Internationales Kaufrecht ) is excluded, provided that no other legislative basis is agreed and confirmed in writing by both parties.
- (4) If not otherwise stated clearly in our order confirmation, our place of business is the place of performance.
- (5) In case that our contracts of which these General Terms ( with the priority of the German Allgemeine Geschäfts-, Verkaufs- und Lieferbedingungen ) form an integral part contain provisions or parts thereof that are or become ( outside these General terms ) invalid, illegal, unenforceable due to other reasons than the ones stated in §§ 305-301 BGB, this shall not affect the validity, effectiveness and enforceability of the General Terms and conditions as a whole. The contractual parties are obliged to find and agree new provisions for the clauses in question that preserves the intent of the invalid, ineffective, illegal or unenforceable provisions to the best possible extent. The validity of the other provisions of the General terms and conditions shall remain unaffected.
- (6) In case of any real or alleged difference, divergence, inaccuracy, contradiction or inconsistency between the Allgemeine Geschäfts-, Verkaufs- und Lieferbedingungen as the German AGB and this English version of them the German version of the AGB shall always prevail.