

## General Conditions of Sale and Delivery

### 1 General Points / Area of Application

1.1 The Conditions of Sale and Delivery of GÜNTHER Heisskanaltechnik GmbH (hereinafter referred to as "GÜNTHER") apply exclusively. Any terms and conditions of GÜNTHER's contractual partner (hereinafter referred to as "Customer") which contradict or differ from these Conditions of Sale and Delivery shall not be recognised unless GÜNTHER has given express consent in writing that divergent conditions may apply. These Conditions of Sale and Delivery shall also apply where GÜNTHER delivers to the Customer, without reservation, in the knowledge that the Customer's terms and conditions contradict or differ from its own terms and conditions.

1.2 These Conditions of Sale and Delivery shall also apply to all future transactions with the Customer.

1.3 These Conditions of Sale and delivery shall only apply to entrepreneurs within the meaning of Section 14 BGB (German Civil Code).

### 2 Offer – Acceptance

2.1 All offers made by GÜNTHER are subject to change. GÜNTHER reserves the right to cancel an item, suspend delivery or make price changes. The scope of GÜNTHER's delivery obligations shall be determined by the order confirmation or the offer. Verbal agreements or those made by telephone must be confirmed in writing in order to be valid.

2.2 Where the order qualifies as an offer pursuant to Section 145 BGB, GÜNTHER may accept the said offer within 4 weeks. The contract shall come into being at the latest when the ordered goods are dispatched or, in the case of part deliveries, when the initial delivery is dispatched.

2.3 The documents, drawings, weights and measurements, samples etc. contained in the offers are only approximations and shall not represent guaranteed characteristics. GÜNTHER shall be entitled to depart from the specifications contained in the offer provided that such departures are not of a fundamental or essential nature and do not impede the purpose of the contract.

2.4 The Customer himself is responsible for the application and utilisation of the products he orders because application and utilisation are beyond GÜNTHER's control. The technical advice of application given by GÜNTHER applies only as non-binding information and does not exempt the Customer from the obligation to carry out his own tests and inspections on the products delivered by GÜNTHER to assess their suitability for his (the Customer's) purposes.

2.5 Where GÜNTHER manufactures parts in accordance with the Customer's drawings, the drawings produced by GÜNTHER and approved by the Customer shall prevail. Departures from the approved drawings must be agreed separately and any additional costs incurred in this respect must be reimbursed.

### 3 Intellectual Property Rights

3.1 GÜNTHER shall retain title and copyright to all illustrations, drawings, calculations and other documents. This shall apply in particular with respect to any written documents marked "confidential". The Customer may only disclose them to third parties with the prior written consent of GÜNTHER.

3.2 All illustrations, drawings, calculations and other documents must be returned to GÜNTHER immediately upon first request if GÜNTHER's offer is not accepted or

the contract is terminated for some other reason. This shall also apply with respect to the offer documentation itself.

3.3 Where deliveries are made in accordance with drawings or other information from the Customer and this infringes third party intellectual property rights, the Customer shall indemnify GÜNTHER against all claims.

### 4 Delivery/Delivery Date/Default

4.1 Delivery periods and delivery dates shall only be regarded as binding where they have been expressly guaranteed in writing in the offer. GÜNTHER shall not be bound by the delivery date or delivery period where the Customer fails to comply with his obligations (payment of instalments, production of the necessary documentation etc.) within the agreed time limit. We reserve the right to claim non-performance.

4.2 Delivery periods shall commence no earlier than the day on which the contract is concluded in writing. Commencement presupposes clarification of all technical questions.

4.3 In the case of subsequent changes by the Customer, GÜNTHER shall be released from the obligation to comply with the delivery date or delivery period.

4.4 The delivery period shall have been met where the subject matter of the delivery leaves GÜNTHER's works, or GÜNTHER gives notification of readiness for delivery, prior to expiry of the said delivery period.

4.5 The Customer may not bring claims for delays in delivery which do not result from intent or gross negligence on the part of GÜNTHER. This shall apply in particular with respect to delays in delivery resulting from force majeure. In this case, the agreed delivery date or delivery period shall be postponed for the duration of the circumstances obstructing delivery.

4.6 Returns are only permitted with the prior express agreement of GÜNTHER. Parts from the current delivery schedule so returned must be in their original packing and in perfect, saleable condition. The return shipment shall be sent carriage paid and at the sender's risk and subject to a 15% restocking charge. Processing fees shall be charged according to the work required. This may be e.g. re-coding, cleaning and repackaging.

4.7 In the event that the Customer defaults on acceptance or breaches other duties to co-operate, GÜNTHER shall be entitled to claim compensation for the loss incurred as a result, including any additional expenditure. GÜNTHER shall also be entitled to set a reasonable time limit for acceptance by the Customer and where this expires without result, to cancel the contract and claim damages in lieu of performance.

### 5 Transfer of Risk/Packaging

5.1 The risk shall pass to the Customer when the goods are dispatched at the latest, and this shall also apply in respect of part deliveries which have been expressly permitted.

5.2 Delivery shall be "ex works". GÜNTHER shall only be obliged to insure the goods at its own expense against insurable risks where the Customer expressly requests this. GÜNTHER shall be entitled to insure the goods at the Customer's expense at any time.

5.3 Transport packaging and any other packaging under the Packaging Ordinance (VerpackV) with the exception of pallets will not be taken back. The Customer shall be obliged to arrange for disposal of the packaging at his own expense.

## 6 Prices and Payment

6.1 In the absence of a separate agreement, prices shall always be ex works including loading at the works but excluding packaging which shall be charged separately.

6.2 The designated prices shall be net; statutory value added tax shall be added at the applicable rate.

6.3 In the absence of a separate agreement, debts arising under the contract shall be payable pro rata as follows:

Payment must be made within 30 days of the invoice date without deduction. Discount for prompt payment shall only apply where there is express written confirmation from GÜNTHER.

6.4 GÜNTHER shall be entitled to allocate a payment made by the Customer to the oldest untitled debt. Where costs or interest have already accrued, GÜNTHER shall be entitled to allocate payments against the costs first, then the interest and finally the main debt.

6.5 The Customer shall only be entitled to a set-off if and insofar as his counter claims have been recognised by a declaratory judgement, are undisputed or have been accepted by GÜNTHER in writing. The Customer's right of retention shall be limited to claims arising from the contractual relationship.

## 7 Reservation of Title

7.1 GÜNTHER reserves title to all parts supplied until receipt of all payments under the delivery contract. In the event of a breach of the contract, particularly default on payment, GÜNTHER shall be entitled to repossess the purchased item immediately.

7.2 The Customer must handle the delivered parts with due care and, while they are subject to the reservation of title, shall insure them at his own expense against all forms of loss at their replacement value.

7.3 The cost of maintenance and inspection work while the goods are subject to the reservation of title, must also be borne by the Customer, even if such work is carried out by GÜNTHER.

7.4 In the event of seizure or other intervention by a third party, the Customer must inform GÜNTHER immediately in writing so that the latter can bring an action to oppose execution of the judgement. Insofar as the third party is not in a position to reimburse the judicial and extra-judicial costs of such an action, the Customer shall be liable for them.

7.5 The Customer shall be entitled to resell the goods in the ordinary course of business; however, he hereby assigns to GÜNTHER all debts, up to the amount of GÜNTHER's final invoice (including value added tax), accruing to him as a result of the resale from his customer or a third party, irrespective of whether or not the item had been processed prior to resale. The Customer shall retain the right to recover such debts even after delivery. GÜNTHER's own authorisation to recover the debt shall remain unaffected. However, GÜNTHER undertakes not to recover the debt provided the Customer settles his payment obligations out of the proceeds collected, does not default on payment and, in particular, provided that no application has been made to institute insolvency proceedings and that there has been no suspension of payments.

7.6 In the event that the goods supplied have been irrevocably mixed or combined with other items which are not the property of GÜNTHER, GÜNTHER shall acquire joint ownership of the new item in the proportion of the value of the goods supplied (final invoice amount including value added tax) to the other items at the time of the mixing or combining. The Customer shall hold the resulting rights of sole or joint ownership on GÜNTHER's behalf.

7.7 Payment of part of the cost of tooling shall not entitle the Customer to acquire any rights to such tooling; it shall remain the sole property of GÜNTHER.

## 8 Liability for Material Defects/General Liability

8.1 GÜNTHER shall not be liable for defects arising due to improper handling, wear and tear, storage or other actions on the part of the Customer or third parties. Liability for minor material defects, wear and tear arising from the treatment of cored thermoplastics as well as from chemical effects of the thermoplastics being treated, is excluded.

8.2 GÜNTHER shall not be liable therefore for incorrect operation during installation, conversion, disassembly or for unauthorised opening of manifolds, controllers or nozzles, in particular such with thick-film heaters. Likewise we shall not be liable for damage arising as a result of improper handling, wear, storage or other actions by the customer or third parties. Under legal regulation GÜNTHER shall be liable for compensation, if the breach of duty could be attributed to GÜNTHER and based on intention or gross negligence. As far as the breach of duty, which could be added to GÜNTHER, is due to slight negligence and the culpable breach regards an essential contract obligation, the liability for damages is limited to the foreseeable damage that typically occurs in comparable cases.

This shall not affect our liability under the provisions of the Product Liability Act or our liability for death, personal injury and damage to health. In all other respects any liability on our part is excluded.

8.3 Statutory claims arising from liability for material defects shall be subject to a limitation period of one year as from the date on which the goods were handed over. This shall not amount to a guarantee of durability.

8.4 The Customer shall be obliged to comply with his duty to examine the goods pursuant to Section 377 HGB even where the goods are resold.

8.5 In the context of supplementary performance GÜNTHER shall have the right to choose between subsequent repair and replacement delivery. This shall not affect the more extensive statutory rights.

8.6 The costs involved in subsequent performance shall not be borne by GÜNTHER insofar as such costs are increased due to the fact that, following delivery, the goods are taken to another location away from the Customer's commercial office. This shall not apply if such removal is consistent with using the item in accordance with contractual regulations.

The costs involved in subsequent performance are limited as far as GÜNTHER was originally obligated. Further liability of GÜNTHER is excluded, also in form of compensatory damages.

8.7 The Customer's right of recourse against GÜNTHER due to claims resulting from liability for material defects which are brought against the Customer by his own customers, is excluded if the Customer has not complied with his duty to examine the goods and give notice of defects or if the goods have been changed by processing.

8.8 GÜNTHER's liability for damages under statutory provisions shall be unlimited if GÜNTHER is responsible for a breach of duty due to intent or gross negligence. Where the breach of duty for which GÜNTHER is responsible is the result of simple negligence and there has been a culpable breach of an essential condition of the contract, liability shall be limited to foreseeable loss which typically occurs in similar cases. In other respects liability is excluded.

8.9 Liability under the provisions of the Product Liability Act shall remain unaffected as shall liability for death, personal injury and damage to health.

## **9 Ban on Assignment**

The Customer may not assign any rights to claim against GÜNTHER arising from the contractual relationship.

## **10 Product Liability**

10.1 The Customer may only use the goods in accordance with the regulations and must ensure that these goods are only resold to persons who are familiar with the dangers and risks of the product.

10.2 If the Customer is using the product as a base material or a sub-product of his own products, he shall also be obliged to comply with his duty to provide a warning with respect to the products supplied by GÜNTHER when placing the end product on the market. With respect to their internal relationship, the Customer shall indemnify GÜNTHER, at the first request, against claims arising from a breach of these obligations.

## **11 Other Matters/Concluding Provisions**

11.1 The place of performance shall be Frankenberg (Eder).

11.2 The court with jurisdiction for all disputes arising under the contract shall be Frankenberg (Eder). GÜNTHER shall however be entitled to bring an action against the Customer in the court with general jurisdiction over the Customer or the court with jurisdiction in the place where the Customer has an office.

11.3 German law shall apply exclusively with the exception of the United Nations convention on the international sale of goods (CISG).

11.4 Insofar as individual provisions of the contract are invalid, the validity of the remaining provisions shall not be affected thereby. The parties shall endeavour to replace the invalid provision with a valid one which corresponds most closely to the economic purpose of the contract.