

Delivery Conditions Steuler Anlagenbau GmbH & Co.KG

Preamble

The following terms and conditions apply to all sales, supplies and services of Steuler Anlagenbau GmbH & Co. KG (SAB). By acceptance of the general terms and conditions, the Client agrees with the sole applicability for the respective delivery. SAB does not honour other terms and conditions, unless it has specifically accepted them in writing. Oral agreements – before or in the course of contract conclusion – require SAB's written confirmation to become effective.

1. Offer

- 1.1 The documents belonging to SAB's offer, such as illustrations, drawings, weights and dimensions are without engagement and only become a binding constituent of the contract when expressly confirmed by SAB in writing. These data or data on the composition and durability only apply as guaranteed if it has expressly been defined as such. The same applies to the acceptance of supply risks.
- 1.2 Initial offers, including the documentation required to explain them (sketches, etc.) are delivered free of charge. Should the Client request that documents (drafts, plans, drawings, calculations of strength, etc.) be drawn up, or should the Client request changes to these documents and should SAB not receive the order, then SAB is entitled to bill the Client a reasonable sum for the supplemental work and costs for drawing up this documentation.
- 1.3 SAB reserves all property rights and intellectual property rights to cost estimations, drawings and other documents. The Client shall, however, neither publish them, nor make them accessible to any third parties nor copy them for any other purpose than that for which they were intended, especially not for tenders nor for subsequent deliveries or replacement work by third parties, without the permission of the Contractor. Infringements shall impose an obligation for compensation.

2. Conclusion of a Contract

Offers are subject to written confirmation by SAB. Oral agreements before or in the course of contract conclusion, require SAB's written confirmation to become effective.

3. Scope of delivery

SAB's written order confirmation shall be absolute for the scope of delivery. Any incidental agreements and/or changes require the written confirmation of SAB.

4. Prices and payment

- 4.1 Unless otherwise agreed upon, all prices are ex works inclusive of loading at the factory but exclusive of packaging or any taxes, levies and fees. The statutory value added tax applicable on the day of delivery shall be added to the prices.
- 4.2 Should there be no other agreement payment shall be made by the Client without deductions and without fees or charges to SAB's bank account in accordance with the following scheme: 50% upon receipt of the Order Acknowledgement, 50% after notification of readiness for dispatch.
- 4.3 Should installation works be billed on a time and material basis, SAB installation prices shall be based on the collectively agreed working time. Should the Client demand overtime, night shifts or work on Sundays and public holidays, supplementary payments based on the collective labour agreement shall be billed separately.
- 4.4 Work not included in the contractual agreements is not included in the prices agreed upon and, should there be no other agreement, shall be billed on the basis of time and material. The same shall apply with regard to waiting times due to circumstances beyond SAB's control.
- 4.5 The Client may offset or retain payments against recognized claims or claims which have been declared final and absolute by a court only.
- 4.6 In case of default we are entitled to demand interest for default amounting to 9 percent annually above the relevant base interest rate of the European Central Bank from the relevant due date. We reserve the right to provide proof of higher interest rates. Should reasonable doubt of liquidity on the part of the Client arise before or during the execution of the order SAB can, at its own discretion and regardless of SAB's other rights, require the Client to provide adequate security

or withdraw from the contract.

- 4.7 Bills of exchange and cheques will – if at all - only be accepted on account of performance and free of any costs and charges.
- 4.8 Under contracts with a cross-border relevance all taxes, charges and other fees incurred outside of the Federal Republic of Germany will be at the expense of the Client.

5. Time of Delivery

- 5.1 The delivery period begins with the dispatch of the Order Acknowledgement, however not before the documents, permits and releases the Client is responsible to procure have been delivered nor before the down payment agreed upon has been received by SAB.
- 5.2 Force majeure and other unforeseen events beyond SAB's control, which cannot be eliminated at reasonable expense and which may jeopardize a smooth conclusion of the contract, particularly traffic and operational disorders, strikes, material and energy shortage, official orders as well as import and export restrictions, shall release SAB from its obligations to fulfill the contract for the period and complexity of such impediments. This also applies when SAB's sub-contractors are affected by these incidents. SAB cannot be held responsible for the above incidents if they occur in the course of a delay already experienced. SAB will inform the Client immediately when such hold-ups occur, and again as soon as they have been eliminated.
- 5.3 Should the Client experience damage through a delay in delivery for which SAB is at fault, he is entitled, to the exclusion of all further claims, to demand indemnification for the delay. Such indemnification shall amount to 0.5% for each week of the delay, in total however a maximum of 5% of the value of that portion of the delivery which cannot be used punctually or in accordance with the Contract due to the delay.
- 5.4 The Client may withdraw from the Contract should complete performance become irrevocably impossible for SAB before transfer of risk. The same applies in case of SAB's inability to perform. The Client may also withdraw from the Contract in case SAB is in delay and the Client has defined a reasonable period of grace with the express statement that, following this period, he will not accept delivery and will withdraw from the contract.
- 5.5 Should the completion of the Order be delayed or be suspended upon request of the Client, the Client shall be obliged to pay the costs incurred in storage starting two weeks after SAB's notice of readiness for delivery, but no less than 0.5% of the amount of the Order for each month. In this case, SAB may, at its own discretion and after the expiry of reasonable grace period, otherwise dispose of the goods and/or to supply a replacement item within an appropriate period.

6. Violation of export -/embargo regulations

SAB reserves its right to either withdraw from or terminate the contract in case – the Client or the respective end-user of the subject-matter of the delivery or the services is a person or entity listed under American or multi-national export control regulations or – the country being the destination of the delivery or plant is listed under the said regulations or is embargoed.

In case of withdrawal the deliveries already made and / or services already performed shall be paid by the Client in addition to SAB's right to reasonable compensation. Any further claims of SAB remain unaffected.

The Client is obliged to inform SAB in case the subject-matter of the delivery or the services are destined for an end-user listed under the export control regulations mentioned above or to whom such delivery is sanctioned.

7. Transfer of risks and acceptance

- 7.1 The Client is obliged to accept the delivery made or service performed by SAB upon delivery or upon completion. Self-contained partial deliveries or partial performances shall be accepted by the client upon request of SAB. The same shall apply with regard to deliveries or services that could be withdrawn from inspection due to further performance of the order.
- 7.2 Acceptance can only be withheld due to defects of a substantial na-

ture. In case installation of the delivery is not included in the Order, risk in the delivery shall pass to the Client when dispatch is made, even when partial deliveries are made or when SAB has taken over additional services, e.g. dispatch costs or delivery. Upon request of the Client, SAB shall take out for transport insurance cover at the expense of the Client.

- 7.3 Should dispatch be delayed due to circumstances within the responsibility of the Client, risk is transferred to the Client directly on the date of dispatch readiness, the Contractor being however obliged to get the insurance coverage the Client requests upon such request and at the Client's cost.
- 7.4 Partial deliveries are permissible, provided it is reasonable for the Client, considering the interests of both SAB and the Client.
- 7.5 Should there be no formal acceptance the work performed shall be considered accepted after the expiry of 12 working days after written confirmation of the completion of the work. Should the Client already be making use of the work or a part thereof, acceptance shall be considered complete after 6 working days from commissioning. Temporary or test commissioning shall also be considered as commissioning.
- 7.6 In case the Client defaults the acceptance or fails to act in cooperation or in case that our delivery is delayed for any other reason on the part of the Client, SAB is entitled to demand a claim for compensation for the damage resulting from it, including additional expenses (such as cost for warehousing, interest). In this case the client shall pay to SAB a liquidated damage in the amount of 0,1 % of the purchase order value per calendar day from the date of SAB's notice of readiness for dispatch.
- 7.7 The proof of higher damages and SAB's statutory claims (in particular reimbursement of additional expenses, reasonable compensation, termination) remain unaffected. The liquidated damage set out above is, however, to be offset against further monetary claims. The Client's right to prove that SAB has not incurred any or only slight damages than the above liquidated damages remains unaffected.

8. Reserving title to property

Should SAB deliver the object prior to payment of all amounts to be paid by the Client under the Contract, it shall remain the property of SAB in so far as this is permissible under the law of the territory in which the object is to be found until such amounts are paid in full. Should a reserving of property rights and/or title to the object not be permitted by such laws, but should these laws allow SAB to reserve other rights to the object, then SAB is entitled to execute all rights of this kind. The Client is obliged to cooperate in the measures SAB takes to protect his property rights and/or title or, in the place of such, his other rights to the object delivered.

9. Warranty

- 9.1 SAB's warranty covers the work performed or goods delivered being free of defects at the time of acceptance or delivery.
- 9.2 SAB shall be liable for defects in the delivery including the lack of warranted quality to the exclusion of all further claims and without prejudice to Section 11 below as follows:
 - a) SAB is entitled and obliged to correct all justified defects within an appropriate period of time.

Any claims for rectification of defects can only be made with reference to the individual defective parts. Insofar SAB's performance under the purchase order shall be deemed to be divisible.
 - b) For any essential third-party products, SAB's liability shall be limited to the assignment of liability claims that are due from the supplier of such products.
 - c) Should repeated attempts at correction or improvement be unsuccessful and should SAB fail to remedy the defect within a reasonable period of grace set by the Client, the Client shall have the right to claim a reasonable reduction of the purchase order price.
- 9.3 As a prerequisite for any warranty the plant/unit must be installed/assembled and commissioned properly as well as operated and serviced according to specifications. No warranty shall be accepted for damages arising from unsuitable or improper use, incorrect installation/assembly or commissioning by the Client or a third party, natural wear and tear, incorrect or careless treatment, unsuitable materials, replacement materials, poor preparatory work by the Client or another third party or for operational conditions SAB was not informed of unless such damages are caused through the fault of SAB.

- 9.4 With regard to direct costs incurred by subsequent improvement and/or replacement, SAB bears – in so far as the complaint is legitimate – the costs of the improvement or the replacement part including dispatch. Other costs shall be borne by the Client.
- 9.5 The warranty shall become null and void if the Client or any third party carries out any unauthorized modifications or repairs of the delivery or the object of installation.
- 9.6 The warranty period expires 12 months from the date of commissioning but no later than 18 months after delivery or notification of readiness to dispatch respectively. For spare parts, the warranty period expires 12 months after delivery. Prerequisite for the warranty is, however, that the Client has stored or preserved the spare parts in a proper manner. For corrected parts, the warranty period expires after 6 months from the date of repair or replacement, but at the latest when the original warranty on the delivery item expires.
- 9.7 In case of remedial works in the course of warranty, the warranty period on the part of the plant/unit in question will be extended for the duration of such remedial works.
- 9.8 A guarantee for the quality of the goods exists only in case it is expressly given in SAB's offer or order confirmation in writing.

10. Liability

- 10.1 Further claims, in particular those for compensation of damages which have not arisen on the object of the delivery itself, are excluded.
- 10.2 This exclusion of liability shall not apply in cases of intent, gross negligence of the Contractor's leading managers and legal representatives, in cases of culpable infringements of essential contractual duties and failure to meet warranted qualities.
- 10.3 In cases of culpable infringements of essential contractual duties and the lack of warranted qualities, SAB shall, however, only be liable for contractually typical, reasonably foreseeable damage up to the amount of the value of the Order.

The exclusion from liability set out in section 11.1 and 11.2 shall also not apply to claims arising from the German Product Liability Act (Produkthaftungsgesetz) for personal injury or damage to property for private use.
- 10.4 The preceding sections shall apply accordingly in case the object delivered cannot be used by the Client due to the fault of the SAB as a result of neglected or incorrect execution of proposals and advice made before or after conclusion of the Contract or of other incidental contractual duties, especially instructions for servicing and maintenance.

11. Data protection note

The Client agrees that SAB may file and use the Client data received in connection with the business relation in compliance with the German Federal Data Protection Act.

12. Severability

If any part of these Terms and Conditions is declared unenforceable or invalid, the remainder will continue to be valid and enforceable. The invalid clause will be replaced with a valid one, which comes next the economic purpose of the invalid formulation.

13. Place of fulfillment, place of jurisdiction and choice of law

- 13.1 Place of performance for all payments is SAB's registered place of business.

The place of fulfillment for all other contractual duties shall be specified by the purchase order and the agreed INCOTERM valid on the date of conclusion of the Contract.
- 13.2 Exclusive – including international – legal venue for any disputes arising from or in connection with the contractual relationship shall be the court competent for SAB's registered place of business, provided the Client is a merchant, a legal entity of public law or a special fund under public law.

SAB is, however, entitled to sue the Client at the Client's registered office.
- 13.3 Any and all disputes arising from or in connection with the purchase order are subject to the law of the Federal Republic of Germany to the exclusion of its conflict of law rules. The UN Convention on Contracts for the International Sale of Goods (CISG) and any other international conventions, even after been incorporated in German law, shall not be applicable.