

Terms and Conditions of Sale and Delivery for International Operations of WEEKE Bohrsysteme GmbH, D-33442 Herzebrock-Clarholz

no. 03/2002

I. General, scope

- (1) All offers, deliveries and other services of WEEKE Bohrsysteme GmbH - including those in the future - as regards dealings with the Buyers stated in Item 2 shall be based solely on these "Terms and Conditions of Sale and Delivery for International Operations". Counter confirmation on the part of the Buyer by way of reference to his terms and conditions of business or purchase is hereby rejected. Terms and conditions of the Buyer to the contrary, or those that differ from ours, shall only become the subject matter of contract if these have been expressly recognised by us in writing.
- (2) Our "Terms and Conditions of Sale and Delivery for International Operations" shall only be deemed valid regarding dealings with foreign Buyers (outside the Federal Republic of Germany) who, upon the conclusion of contract, act by way of performing their professional or commercial activity. Our "Terms and Conditions of Sale and Delivery for Domestic Operations" are deemed applicable with regard to our domestic buyers.

II. Drawings and descriptions; duty on the part of the customer to advise

- (1) We reserve the right regarding all ownership interests, copyrights and industrial proprietary rights (including the right to register these rights) to drawings, plans, samples, cost estimates and other documents or electronic data pertaining to the delivery item. The stated documents may only be used for the purpose in accordance with the regulations and may not be forwarded to third parties without our approval.
- (2) Prior to the conclusion of contract the Customer is to advise us insofar as the ordered delivery item
 - should not be solely suitable as regards ordinary use,
 - is applied subject to unusual conditions or conditions that engender increased stress or which pose a particular health hazard, safety risk or danger to the environment,
 - is intended to be used to process unusual materials.

III. Conclusion and content of contract

- (1) The details and information stated in the product catalogues and price lists shall only be deemed legally binding elements of the contract if the contract expressly refers to such details and information.
- (2) The subject matter of contract shall be ultimately specified by way of the product description contained in our written offer or our written confirmation of order. Subsidiary agreements, oral declarations by salaried employees or representatives as well as amendments of existing orders (including amendments of delivery items) shall be subject to our written confirmation in order to be deemed valid.

IV. Alterations to the delivery item

- (1) We reserve the right to make construction and material changes as regards the description of the delivery item agreed upon as per contract insofar as the normal use or the use of the delivery item presumed on the basis of the contract is not impaired in a considerable or permanent manner, and the alteration is acceptable to the Buyer.
- (2) Requests for alteration on the part of the Buyer shall be taken into account in accordance with an appropriate agreement aimed at providing for the effects on the price and delivery period.

V. Prices, payment

- (1) In the absence of a special agreement, the price details are to be understood ex works (EXW) plus packaging, shipping, insurance and the taxes and other levies associated with the delivery.
- (2) Payments are to be effected in the currency that is stated in our offer or in our confirmation of order.
- (3) Payments are to be effected by bank transfer free of charges to our account stated in the invoice. Irrespective of the means of payment, the payment shall only be deemed effected once the full payment has been irrevocably credited to our account so that we can dispose of such an amount (receipt of payment). All additional costs incurred as a result of the choice of means of payment shall be borne by the Buyer.

- (4) Insofar as the Buyer fails to pay the purchase price within the agreed payment period, we may demand interest in the sum of 8% p.a. above the Main Refinancing Interest Rate of the European Central Bank irrespective of other legal remedies. We are free to furnish proof of actual greater damage.
- (5) Setting off or settling or exercising a right of retention shall only be permitted as a result of legal claims of the Buyer that have been recognised by us and such which are not disputed, which are ready for judgement or which have become res judicata.

VI. Delivery period, creditworthiness doubts, taking possession of delivery item

- (1) The delivery period arises from the agreements between the contracting parties. The provision in good time of all the documents to be surrendered by the Buyer and the complete clarification of the technical questions to be answered by the customer as well as the details to be provided by the Buyer regarding the requested design shall be deemed the preconditions as regards adherence to the delivery period.
- (2) The delivery period shall be deemed to have been met if the circumstances in accordance with Item VII, paragraph 2, that bring about the passing of risk, have occurred prior to the expiry of the delivery period.
- (3) The delivery period shall be extended accordingly in the event that we are not able to honour our obligation to deliver, or not honour it in good time, as a result of an obstacle outside our sphere of influence which, on conclusion of contract, could not have been reasonably foreseen by us. The obstacles outside our sphere of influence include, in particular, self-supply on the part of our suppliers which is not within the fixed period and is not carried out in due form. We shall inform the Buyer as soon as possible of the start and end of the obstacle. If the obstruction lasts for longer than 3 months, or if it has been established that it shall last longer than three months, both the Buyer and Homag may declare the contract rescinded.
- (4) If, following conclusion of the contract, we become aware of circumstances that justify well-founded doubts regarding the ability to pay or the creditworthiness of the Buyer, and this places in jeopardy our claim for payment resulting from the concluded contract, we shall be entitled to refuse our performance until payment resulting from the concluded contract has been brought about or a security for the payment has been furnished and the Buyer has settled other payments commercially linked to the concluded contract which may be due from the business association.
- (5) In the absence of an agreement to the contrary, the Buyer shall be under obligation to take possession of the delivery item within ten days following receipt of our notice pertaining to the availability of the delivery item at our factory. If this period for taking delivery is exceeded by more than three days, this shall constitute a fundamental breach of contract which - irrespective of other legal remedies - shall also entitle us to make arrangements for the shipping of the delivery item to the Buyer, and the appertaining formalities, on the Buyer's account. Refusal to accept the delivery item shall not affect the obligation on the part of the Buyer to pay the purchase price.

VII. Delivery, shipping and passing of risk

- (1) The place of delivery shall be specified in accordance with the delivery clauses agreed upon between us and the Buyer which are to be interpreted according to Incoterms 2000. Insofar as no special delivery clause has been concluded, deliveries shall at all times be carried out EXW.
- (2) Insofar as nothing to the contrary is agreed upon, the risk shall pass to the Buyer at the time at which the delivery item has been made available to the Buyer. If the delivery item is shipped to the Buyer, the risk shall pass to the Buyer at the latest at the time at which the initial carrier receives the delivery item. If the shipping of the delivery item is delayed as a result of circumstances which are not our responsibility, the risk shall pass to the Buyer upon notification of the readiness for shipment.

- (3) At the Buyer's request all consignments shall be insured on his account as from the passing of risk. In the event of damage we shall assign the claims resulting from the insurance step by step to the Buyer against provision of the Buyer's contractual services (including reimbursement of the insurance premium).

VIII. Preparation of assembly etc.

Insofar as our performance includes setting up, assembling and/or commissioning the delivery item, or similar work, the Customer undertakes to take all action at the workplace so that the envisaged work can be carried out. The customer undertakes, in particular, to make available at the workplace electrical connections, connections for compressed air equipment and sufficient lighting. Furthermore, dry and lockable rooms for storing the assembly personnel's tools are to be provided.

IX. Inspection test, acceptance

- (1) In the event that assembly work is carried out, the parties may, in particular, agree that the degree to which the delivery item is in line with the contract be stipulated by way of a joint inspection test.
- (2) In the event that no inspection test is agreed upon, we shall inform the Buyer of the date of the inspection test.
- (3) The cost of the inspection test (including the cost of trial substances and production equipment and facilities) shall be borne by the Buyer. By contrast, we shall carry the cost of our personnel.
- (4) A written record of the inspection test shall be drawn up and signed by both parties. Possible faults pertaining to the delivery item are to be noted.
- (5) The delivery item shall be deemed accepted if
- it contains no defects, or merely insignificant defects or
 - the inspection test cannot be carried out due to negligence on the part of the Buyer, or
 - The Buyer has put the delivery item into operation for his own commercial purposes.
- (6) If the delivery item proves to lack conformity with the contract during the inspection test, we shall be entitled and under obligation without delay to eliminate the delivery item's lack of conformity with the contract. In other respects the regulations of Item X are deemed applicable.

X. Lack of conformity of delivery item or documents with contract, notice of defects, warranty

- (1) Insofar as no joint inspection test is carried out, the Buyer is to inform us in writing without delay upon taking possession of the delivery item of a recognisable lack of conformity of the delivery item and/or the documents with the contract, at the latest within one week after having taken possession of the delivery item. The Buyer is also to precisely describe the type of lack of conformity of the delivery item with the contract. Furthermore, the Buyer is to inspect the delivery item and/or the documents without delay, at the latest within one week after having taken possession of the delivery item. This shall also apply if a joint inspection test is carried out. The Buyer shall forfeit the right to make reference to a lack of conformity of the delivery item with the contract if he does not provide us with written notification within one week following the time at which he detected the lack of conformity of the delivery item with the contract, or should have detected such a lack of conformity of the delivery item with the contract, and in this respect does not precisely describe the type of lack of conformity with the contract irrespective of the reasons the Buyer puts forward for the non-adherence to these requirements. The written notice of defects on the part of the Buyer must have been sent within the one week deadline as from the taking of possession of the delivery item or from the time at which the lack of conformity of the delivery item with the contract is detected. Furthermore, it is necessary that we actually receive the notice of defects that is sent within the specified time.
- (2) If a lack of conformity of the delivery item with the contract cannot be established following a notice of defects, the Buyer is to reimburse us with the costs associated with the inspection of the delivery item.
- (3) In the event of a lack of conformity of the delivery item or the documents with the contract, we shall be entitled to eliminate such a lack of conformity following the agreed delivery time too by way of a subsequent improvement or replacement delivery. Insofar as nothing to the contrary arises from the contract, or from the circumstances of the conclusion of contract - in particular the negotiations that are held - a lack of conformity shall not be deemed given if the delivery item does not comply with the technical and other norms that are valid in the country of destination (registered office of the Buyer) or if the delivery item is not suitable for certain applications.

- (4) Insofar as the lack of conformity of the delivery item or the documents with the contract is not eliminated within a reasonable period of time by way of a subsequent improvement or replacement delivery, the Buyer may demand a reduction of the purchase price in line with the reduced value of the delivery item.
- (5) In the event of a lack of conformity of the delivery item or the documents with the contract, the Buyer shall not be entitled to demand that the contract be cancelled instead of reducing the purchase price unless the lack of conformity with the contract constitutes a key breach of contract. A key breach of contract shall not be deemed given if we eliminate the lack of conformity with the contract within a reasonable period of time, which must be at least six weeks, that is fixed by the Buyer.
- (6) The right of the Buyer to lodge warranty claims shall fall under the statute of limitations, subject to sentence 3, within 12 months following the taking of possession of the delivery item by the Buyer. If an inspection test has been agreed upon, the statute of limitations shall commence upon the expiry of the day on which the inspection test is carried out or - if such a test cannot be carried out as a result of negligence on the part of the Buyer - or if it should have been carried out, at the latest, however, upon the expiry of the day on which the Buyer has put the delivery item into operation for his own commercial purposes. The statute of limitations shall apply in any case as soon as the delivery item has been used for 2,500 operating hours.

XI. Liability, compensatory damages

- (1) Our liability for compensatory damages - in particular for pecuniary consequential damage as a result of delayed delivery or a lack of conformity of the delivery item or the documents with the contract - is excluded unless it is based at least on gross negligence or intent.
- (2) This does not affect our liability in accordance with the applicable and non-modifiable statutory product liability regulations as per agreement.

XII. Reservation of title

- (1) The delivery item shall remain our property until payment in full of the purchase price within the meaning of Item V, paragraph 3 insofar as such reservation of title is effective in accordance with applicable law.
- (2) The Buyer is under obligation to take all action that serves the purpose of retaining this reservation of title or a security interest recognised in the country of destination (registered office of the Buyer) which serves an equivalent purpose. If the Buyer violates this obligation, this shall constitute a fundamental breach of contract.
- (3) The provisions pertaining to the passing of risk within the meaning of Item VII, paragraph 2, shall not be affected as a result of the reservation of title agreement.

XIII. Place of jurisdiction, applicable law

- (1) Solely the courts at our registered office in D-33442 Herzebrock-Clarholz shall be deemed to have jurisdiction for all disputes resulting from the contract. However, contrary to sentence 1 we are entitled to bring an action against the Buyer at the courts deemed to have jurisdiction at his registered office.
- (2) The law of the Convention of the United Nations dated 11 April 1980 pertaining to Contracts for the International Sale of Goods (CISG) is deemed applicable regarding the contract. Legal matters that are not provided for in this convention, or which cannot be decided on the principles of such a convention, shall be subject to Swiss substantial law.

XIV. Final provisions

- (1) The invalidity or impracticability of an individual provision of these Terms and Conditions of Sale and Delivery or an agreement of the contracts entered into on the basis of these Terms and Conditions of Sale and Delivery shall not affect the validity of the other provisions or agreements. In the case of an impracticable provision or agreement, the contracting parties shall endeavour to replace such an impracticable provision or agreement with a valid provision or agreement that comes closest to the economic purpose of the invalid or impracticable provision or agreement to such an extent as this is permissible.
- (2) The contracting parties are mutually under obligation to take all acceptable action necessary to achieve the purpose pursued by way of the contract, and to refrain from all actions which adversely affect efforts to achieve and maintain the contract.