

General Terms and Conditions of Sale and Delivery

of CABERO Wärmetauscher GmbH & Co. KG
(hereinafter also referred to as "Supplier")

I. Scope of application

1. Offers, Supplies and services provided by Supplier shall always be made exclusively on the basis of these General Terms and Conditions of Sale and Delivery.
2. Standard terms used by the customer which contradict these General Terms and Conditions of Sale and Delivery or deviate from their provisions are not acknowledged by Supplier, except if Supplier has expressly agreed in writing to the application of such terms. The General Terms and Conditions of Sale and Delivery shall even apply if the Supplier, being aware of contradicting or deviating terms used by the customer, performs delivery without reservations.
3. The General Terms and Conditions of Sale and Delivery shall also apply to all future business relations.

II. Conclusion / contents of the contract

1. The object of the contract is the product specified in the offer. In addition to this, the customer shall be provided with technical documentation and operating and servicing manuals. The Supplier's written order confirmation shall be decisive for the scope of supply; in the event that the Supplier's offer was subject to a time limitation and the Customer has accepted the offer in good time, the offer shall be decisive for the scope of supply if an order confirmation has not been provided in good time. Ancillary agreements and modifications require the Supplier's written confirmation.
2. The documents belonging to the offer, such as illustrations, drawings, information on weights and dimensions, shall only be approximations, unless they have expressly been agreed on as binding.
3. The Supplier reserves title and copyrights to all cost estimates, drawings and other documents; they may not be disclosed to third parties.

III. Prices

1. Unless expressly agreed otherwise, the prices shall be ex works, including loading at the factory and packaging, but not including shipment, plus value added tax at the applicable statutory rate.
The deduction of cash discounts is only permitted if the Customer has fulfilled in good time all obligations towards the Supplier, including such from other contracts.
2. If catalogue appliances are ordered, the Supplier's price lists valid on the day of the order shall be decisive; if the period between the order and the delivery is more than four months, the Supplier reserves the right to adequately increase the remuneration under the following conditions:
 - if the circumstances applicable at the date of the conclusion of the contract, and on which the determination of the remuneration was based, have changed more than insignificantly. This shall in particular include costs of material, salaries, public charges and other items which the Supplier cannot decisively influence.
 - the extent of the price increase, i.e. the comparison between the agreed price and the final price, is reasonable.
3. If special appliances and equipment are ordered, the Supplier shall be entitled to invoice salary and material price increases, provided they occur after the issue of the offer and prior to the time of completion, including a corresponding reasonable surcharge for overheads.
4. Work not included in the offer will be invoiced at daily rates, on the basis of the working hours to be certified by the Customer, plus accommodation and travel expenses, and on the basis of the material used. Any special requests or modification requests by the Customer after the order confirmation or after commencement of production will also be invoiced separately.

IV. Reservation of title

Supplies will only be made on the basis of the reservation of title described in detail below. This shall also apply to all future deliveries, even if the Supplier does not always expressly refer to this provision.

1. All supplied goods shall remain the Supplier's property up until all claims have been settled, including in particular the Supplier's relevant outstanding balance claim against the Customer from the business relationship, irrespective of the legal basis of such claims. If the value of the object used as collateral and supplied under reservation of title exceeds the Supplier's total claim by more than 20%, the Supplier shall insofar be obligated to release collateral upon the Customer's request.
2. If the reserved-title goods supplied under reservation of title are treated, processed or redesigned, the reservation of title shall cover such reserved-title goods and the Supplier shall become the owner, under exclusion of section 950 of the BGB (German civil code). If the new object is produced from material supplied by various reserved-title holders - irrespective of the nature of such production - the Supplier shall be entitled to co-ownership in the new object, in the proportion of the invoice value of the reserved-title goods in relation to the invoice value of the other goods used. Should the Supplier's title expire due to incorporation, combination or mixing, the Customer hereby transfers to the Supplier title to the new supply or object, to an extent which corresponds to the invoice value of the reserved-title goods. The Customer shall keep the goods for the Supplier, free of charge. The Supplier's sole or co-ownership rights originating from this shall constitute reserved-title goods. In order to provide security for the Supplier's claims against the Customer, the Customer hereby also assigns to the Supplier any claims which he obtains against a third party from the combination of the reserved-title goods with land. The Supplier accepts the assignment.

3. The Customer may only sell reserved-title goods in the course of his regular operations, and only as long as he is not in default towards the Supplier, however, always subject to the condition that the claims from the re-sale of such goods shall pass to the Supplier. The Customer's claims from the re-sale of reserved-title goods to third parties are hereby assigned to the Supplier; the Supplier hereby accepts this assignment. The assignment shall apply irrespective of whether the goods are re-sold without or after processing.
4. The Customer shall have the right to collect the claims from the re-sale until the Supplier revokes this authorisation, which he shall be entitled to do at any time. The Supplier shall only exercise this revocation right if the Customer's financial situation deteriorates. Under no circumstances shall the Customer be entitled to assign the claims to third parties. Upon the Supplier's request, the Customer shall be obligated to immediately notify his clients of the assignment to the Supplier, and to provide the Supplier with all information and documents required to collect such claims.
5. If the reserved-title goods are seized, or in the event of other interventions which endanger the Supplier's rights or possibilities of disposal, the Customer shall be obligated to immediately inform the Supplier in writing.
6. Should claims against an insurance company or other third parties originate for the Customer due to damage, deterioration, loss or destruction of the reserved-title goods, or due to other reasons, such claims, including all ancillary rights, are hereby assigned in advance to the Supplier in lieu of the sales proceeds, and to the same extent.
7. If the Supplier enforces the reservation of title, this shall not be considered to be a withdrawal from the contract, unless the Supplier expressly states so in writing.
8. Should the Customer not comply with his payment obligations, or should he suspend payments or fail to honour a bill or a cheque, the Supplier shall have the right to take direct possession of the reserved-title goods at any time.
9. The Customer shall be obligated to handle the purchased goods with care until title has passed to him. He shall in particular be obligated to sufficiently insure the goods at his cost and at their original value against damage due to theft, fire and water. Should maintenance and inspection work be necessary, the Customer shall perform such work in good time and at his own cost. Until title has passed, the Customer shall immediately inform the Supplier in writing if the supplied object is seized or otherwise becomes subject to intervention by third parties.

V. Payment terms

1. Unless agreed otherwise, payment is due within 14 days from the invoice date. Should the Customer be in default of payment, the Supplier may invoice default interest at a rate of 8 % above the applicable basic interest rate. This shall not impair the right to assert damages going beyond the aforesaid.
2. The Supplier shall have the right to use payments to first settle older debts, even contrary to the Customer's instructions, whereby the Customer shall in such cases be informed of the type of settlement which has been carried out.
3. The Customer shall only have the right to a set-off, retention or price reduction if his counter-claims have been determined in a final and conclusive manner, are uncontested or have been acknowledged by the Supplier.

VI. Delivery period

1. Delivery dates and other deadlines must be agreed in writing.
2. Delivery periods shall commence upon dispatch of the order confirmation, however, not before the Customer has complied with any performance obligations incumbent upon him, in particular relating to the provision of documents, permits, releases to be procured by the Customer, as well as receipt of the agreed down-payment.
3. The delivery period shall be deemed to have been complied with if the Customer has been sent the delivery notification pursuant to clause 5 prior to expiry of the relevant period.
4. The Supplier shall have the right to perform prior to expiry of the delivery period. The dispatch of a delivery notification pursuant to clause 5 shall be a prerequisite.
5. Prior to expiry of the agreed delivery period, the Supplier shall send the Customer a delivery notification, and shall have the ordered goods ready. The Customer shall be obligated to inform the Supplier within 2 working days from receipt of the delivery notification of a binding delivery date which must be within the next 10 working days from receipt of the delivery notification.
6. If shipment is delayed upon the Customer's request, he shall, if the goods are stored at the Supplier's facility, be charged with the storage costs incurred, starting from a date one month after the notification of the readiness for shipment. However, the Supplier shall have the right, after unsuccessful expiry of a period of grace set by the Supplier, to otherwise dispose of the object of supply, and to deliver to the Customer after a reasonably extended delivery period.

VII. Transfer of risk and receipt of the goods

1. Passing of the risk to the Customer shall at the latest take place upon dispatch of the delivery objects, even in the event of partial delivery, or if the Supplier has taken over other services, e.g. payment of shipping costs or delivery and assembly. Upon the Customer's request, the Supplier shall insure the shipment at the Customer's cost against theft and damage due to breakage, transport, fire and water, as well as other insurable risks.
2. Should, for reasons within the Customer's sphere of responsibility, shipment be delayed after the goods have been made available by the Supplier ready for dispatch, the risk shall pass to the Customer on the day on which the goods are ready for dispatch; however, the Supplier shall be obligated to take out any insurances requested by the Customer, at the Customer's cost.
3. Supply of goods has to be accepted by the Customer, even if such goods show insignificant defects, without prejudice to the rights under section VIII.
4. Partial delivery shall be permitted.

VIII. Liability for defects

1. The Supplier shall be liable for defects which exist at the time of delivery in accordance with the following rules. In this context, all warranty claims shall become time-barred after expiry of 12 months from delivery. This shall not apply in as far as sections 438 (1) no. 2 or 634 a of the BGB mandatorily provide for longer periods.
 - 1.1. The customer shall inspect the delivered goods for defects immediately after receipt.
 - 1.2. Repair and/or rectification of a defect shall be deemed to have failed if two attempts within a reasonable deadline were unsuccessful. In such cases, the Customer shall have the right to rescind the contract or to reduce the purchase price. Should the Supplier have violated his obligations in a more than insignificant manner, the Customer shall be entitled to request damages in accordance with the statutory provisions, in addition to rescission of the contract or reduction of the purchase price. The Customer shall be obligated to provide proof that damage has occurred and of the amount of

such damage. The restrictions of warranty pursuant to this section VIII of these Standard Terms and Conditions shall not apply to the Customer's damage claims under statutory provisions. However, the restrictions of liability provided for in section IX shall apply *mutatis mutandis*.

1.3. After expiry of the warranty period, claims based on defects can only be asserted if the Supplier and the Customer have agreed in writing on an extension of the period of limitation prior to expiry of this period of limitation.

1.4. No warranty shall be assumed for damage to the object of delivery which occurred due to the following reasons: Inappropriate or improper utilisation, failure to comply with the operating and servicing manual, failure to comply with the technical documentation, incorrect assembly or commissioning by the Customer or a third party, natural wear-and-tear, incorrect or negligent handling, inappropriate operating material, replacement material, defective construction or assembly work, inappropriate supporting ground or place of assembly, chemical, electro-chemical or electrical influence, unless they were caused by a fault on the part of the Supplier. Claims based on defects shall furthermore not exist if the products only deviate insignificantly from the agreed characteristics, or if their usability is only insignificantly impaired, and also if damage was caused due to special external reasons which were not presupposed under the contract.

IX. Limitation of liability

Apart from the above regulations on warranty, the Supplier's liability shall be governed by the following provisions:

1. Liability shall be without limitation in the event of intent, gross negligence and severe organisational negligence, as well as for damage due to acts causing bodily injuries, adverse health effects or death.

2. Liability for damage caused intentionally or negligently due to violations of principal contractual obligations or caused intentionally or in a grossly negligent manner by the Supplier's vicarious agents, without a violation of principal contractual obligations shall be limited to such damage which is typical and foreseeable in the context of utilisation as contemplated under the contract.

3. In all other contexts, our liability shall be limited as follows: Damages in lieu of performance and default damages are limited to the negative interest, which shall be compensated for up to the sum of the agreed purchase price as the maximum.

Damages on account of non-performance or faulty performance shall be limited to the purchase price.

Damages in lieu of performance shall be excluded if the performance obligation has ceased to exist.

4. Should the Customer's negligence have contributed to the damage, this shall be taken into account for the determination of damages.

5. Should the Customer or a third party have executed improper modifications or repair work without the Supplier's prior authorisation, liability for any consequences resulting from this shall be excluded.

6. Liability under the *Produkthaftungsgesetz* (German product liability act) shall be excluded.

X. Miscellaneous

1. This contract shall be governed by German law, in particular the BGB (German civil code) and the HGB (German commercial code). The application of the Vienna UN Convention on Contracts for the International Sale of Goods (CISG) is excluded, even if the Customer is based abroad.

2. The place of performance shall be the Supplier's place of business. The place of jurisdiction shall be Munich, Germany.

3. Modifications of, amendments to, as well as other additions to the contract must be effected in writing and must be expressly referred to as such.

5. Should individual provisions in this contract be wholly or partially invalid or be or become infeasible, this shall not affect the validity of the remaining provisions. The same shall apply should the contract contain a gap. The ineffective or infeasible provision shall be replaced, and the gap shall be filled, with an adequate provision which, to the extent permitted by law, comes as close as possible to that which the contracting parties would have intended had they considered the issue upon conclusion of this contract.

6. Should the circumstances which have become the basis of this contract change substantially after the conclusion of the contract and should this have significant consequences for the Supplier's operations and performance, the contract shall be adjusted as appropriate. Should an adjustment be economically unreasonable for the Supplier, the Supplier shall have the right to rescind the contract.

7. For the purposes of information only, these Standard Terms and Conditions are also presented in a synoptic form with an English