Conditions of Sale, Delivery and Payment

JOWO Systemtechnik AG

1. Validity

1.1. All deliveries, works and services as well as offers of JOWO Systemtechnik AG shall be exclusively based on these conditions of sale, delivery and payment (hereinafter also referred to as Conditions of Sale). We do not acknowledge any conflicting terms and conditions or terms and conditions of the customer that deviate from our Conditions of Sale, unless we have expressly accepted them in writing. Our Conditions of Sale shall also be effective, if we effect delivery to the customer without reservations although we are aware of conflicting terms and conditions or of terms and conditions of the customer that deviate from our Conditions of Sale.

1.2. Our Conditions of Sale shall exclusively apply vis á vis entrepreneurs, corporate bodies under public law or special funds under public law in the sense of § 310 par. 1 of the German Civil Code (BGB).

2. Conclusion of a contract

2.1. Orders of a customer shall only bind us after we have confirmed the order in writing. In the event we should send you an invoice directly, this shall be deemed as confirmation of the order.

2.2. Content and extent of the contract shall be exclusively governed by our order confirmation, including these Conditions of Sale.

2.3. All images and drawing serve as illustration only. They are approximately decisive only insofar as their usability for the stipulated purpose depends upon their exact conformity. They do not constitute guaranteed features of properties and condition, but are descriptions or designations of the delivery, works or service. Divergencies customary in trade and divergencies that are due to legal regulations or that constitute technical improvements are permitted, insofar as they do not affect the usability for the purpose laid down in the contract and insofar as the customer does not suffer a significant disadvantage by such divergencies.

2.4. No responsibility is taken for the correctness and completeness of catalogue data of our suppliers.

2.5. We retain the right of property and all copyrights to any and all of our offers, drafts, drawings, sketches, samples and other documents. Without our express consent the customer shall neither be entitled to make these items as such or their contents accessible to third parties, nor shall he be entitled to disclose them or to use or copy them himself or through third parties. At our request the customer shall be obliged to return all items to us and to destroy any possibly made copies thereof, if he does not require them in the ordinary course of business any longer or if negotiations do not lead to the conclusion of a contract. Our property rights and other rights shall persist even if the customer has paid for the drafts, drawings, sketches etc. We accept no responsibility in case the drafts should violate existing property rights (copyrights, trademarks etc.) of third parties.

3. Prices and payment

3.1. Our prices are always non-binding, ex works Delmenhorst and excluding packaging and the currently valid amount of VAT.

3.2. Our invoices are payable net within 14 days from the invoice date. Payment by cheques shall only be deemed as fulfilment of the obligation once the cheques were honoured. Deduction of cash discount shall only be permissible under the terms of a special written agreement. In the event the customer should fail to effect payment at maturity, arrears shall accrue default interest of 5% p.a. as of the due date; our right in case of default to claim further damages shall remain unaffected.

3.3. In case we have concluded a contract for the production of goods and/or in case we contracted to install the goods we shall be entitled to demand instalments in the amount of the value of the partial works and services provided by us.

3.4. The offset of counterclaims of the customer or the retention of payments due to such claims shall only be permissible insofar as the counterclaims are undisputed or have become final and absolute.

3.5. In case payment by instalments was stipulated, all our claims shall become immediately payable if the customer fails to fulfil the payment terms for reasons he himself is responsible for or if he ceases to effect payment.

3.6. In addition, we shall have the right to carry out outstanding deliveries and services only against advance payment or by way of security, to refuse to carry out such works and/or services and – after having set a deadline – to cancel the contract (§ 321 of the German Civil Code (BGB)) if, after conclusion of the contract, we should become aware of circumstances that might considerably damage the customer´s creditworthiness and that jeopardize payment to us of our customer´s outstanding debts from the respective contract.

4. Delivery time and default in delivery

4.1. All delivery times given by us shall always be approximate and non-binding dates only, unless a binding deadline or a binding date was expressly promised or agreed upon in writing. If dispatch was covenanted, delivery deadlines and delivery dates refer to the handover date to the carrier, freight forwarder or other third party commissioned with such transport.

4.2. We shall be entitled to partial deliveries, if

- the partial delivery is serviceable for the customer within the scope of the contractual purpose,
- delivery of the remaining ordered goods is guaranteed and
- if, as a result, no considerable additional work and costs incur to the customer (unless the customer agrees to accept these costs).

4.3. In case we cannot comply with binding delivery times for reasons we are not responsible for, we shall immediately inform the customer thereof.

4.4. We are not liable for the impossibility or delay of deliveries caused by force majeure or other events not foreseeable when the contract was concluded (e.g. lockout, strike, operational disruption or deliveries of our suppliers that have failed to take place, were faulty or not in time) for which we cannot be held responsible. If such incidents substantially complicate delivery or render it impossible and if the impediment is not merely of a temporary nature, we shall be entitled to cancel the contract. In case of a temporary impediment the delivery time shall be extended by the period of time during which the impediment existed plus an appropriate start-up period. In the event that, due to the delay, the customer cannot be reasonably expected to accept delivery of the goods any longer, he shall be entitled to cancel the contract immediately by means of a written statement to us.

4.5. If delivery is delayed or a delivery, regardless for which reason, becomes impossible for us, our liability shall be limited to compensation in accordance with section 9 of these Conditions of Sale.

5. Retention of title

5.1. We retain proprietorship of goods supplied by us to the customer (goods subject to retention of title) until all our claims are fulfilled, particularly our respective balance claims, which, notwithstanding the legal reason, we are entitled to. This shall also apply to payments made for specially designated claims.

5.2. The customer may resell the goods, which are subject to reservation of title, in the normal course of operations until their recovery (section 5.9). He is not licenced to otherwise dispose of the goods subject to reservation of title.

5.3. In case the goods subject to reservation of title are resold, the customer hereby assigns to us all claims against the buyer arising from such resale. The same shall apply to any and all other claims, which supersede the goods subject to reservation of title or which otherwise arise with regard to the goods subject to reservation of title. They shall serve as security to the same extent as the goods subject to reservation of title. In the event the customer sells the goods subject to reservation of title together with other goods that were not supplied by us, the assignment of the receivables from such resale shall be limited to the amount of the invoice value of the respective resold goods subject to reservation of title.

5.4. If the customer processes the goods subject to reservation of title, we hereby covenant that such processing is carried out in our name and for our account as manufacturer and that we directly assume ownership or – if materials from several owners are used for the processing or if the value of the processed goods exceed the value of the goods subject to reservation of title – co-ownership (fractional ownership) of the newly manufactured goods in the ratio of the value of the goods subject to reservation of title to the value of the newly manufactured goods. In case we should not gain such ownership, the customer hereby assigns as security to us his future ownership or – in the above-stated ratio – co-ownership of the newly manufactured goods. If the goods subject to reservation of title are combined with other items thus forming a unitary item or if they are inseparably mixed and one of these other items constitutes the major component, we, insofar as the major component belongs to us, assign proportional co-ownership of the unitary item to the customer in the ratio stated in sentence 1.

5.5. We revocably authorize the customer to collect the receivables assigned to us in his own name. We shall only revoke this collection authorization in case the customer fails to honour his payment obligation arising from the accrued profits, in case he is in default of payment and particularly if an application to open insolvency proceedings was filed or if payment was ceased. In the event one of the above-stated incidents should occur, we may demand that the customer informs us about the assigned receivables as well as about their debtors, that he provides all information necessary for the collection thereof, that he hands over the respective documents and advises the debtor of the assignment.

5.6. The customer shall in no case be authorized to assign the receivables.

5.7. In case the value of the existing securities exceeds the secured receivables by a total of more than 10%, we shall insofar be obliged to release securities of our own choice.

5.8. If third parties access the goods subject to reservation of title, in particular by means of garnishment, the customer will immediately advise them of our proprietary rights and he will inform us thereof, thus enabling us to enforce our proprietary rights.

5.9. If we withdraw from the contract because the customer has breached the terms of the contract, especially by default of payment, (recovery), we shall be entitled to claim return of the goods subject to reservation of title at the customer´s expense. The customer hereby authorizes us to access his premises in such cases and to retrieve the delivered goods. Taking back the goods shall constitute a withdrawal from the contract only if expressly stated by us.

6. Installation agreement

6.1. In case the contract stipulates installation, the customer has to ensure that at the date the installation works were agreed to commence the structural prerequisites for a faultless and smooth installation are fulfilled. In the event that delays or impediments should occur in this connection that do not fall into our scope of responsibility, we reserve the right to separately invoice the resulting expenses. Installation presuppose structural

conditions that allow for an unhindered implementation without the necessity of additional work.

6.2. Special services, which are not included in the installation agreement and that become necessary during installation for reasons we are not responsible for, shall be additionally invoiced. The same shall apply to supplementary special services requested by the customer that were agreed upon by the parties.

7. Packaging, delivery, passing of risk, acceptance and default of acceptance

7.1. Packaging is at cost price and it is not taken back, unless the law requires otherwise. Goods are alternatively packed in cardboard boxes, crates, on palettes or in containers. Cable drums must be returned to us.

7.2. As a rule, deliveries are carried out "ex works" (EXW), i.e. ex our plant in Delmenhorst, and they are subject to the respective, currently valid Incoterms issued by the ICC. Individually concluded special agreements shall remain unaffected hereby. Consignments, even if they are sent free of carriage charges, are always sent at the customer´s risk. At the very latest the risk passes on to the customer when we hand over the delivery item (here the beginning of the loading shall be decisive) to the carrier, freight forwarder or to another third party commissioned to carry out the shipment.
This shall also apply in case of partial deliveries or if we agreed to provide additional other services (e.g. installation). If dispatch or the handing over is delayed due to circumstances the reasons of which fall within the scope of the customer´s responsibility, the risk shall pass on to the customer from the day onward on which the delivery item was ready for dispatch and on which the seller advised the customer accordingly.

7.3. The mode of dispatch and the packaging shall be determined according to our best judgement.

7.4. The customer is obliged to procure at his own expenses all documents necessary for the export of the bought goods (e.g. export and customs licences). We shall neither be held responsible for the legality of the export of the goods, nor for their conformity with the legal and technical regulation of the import country. Furthermore, we shall also not be liable for the goods´ compliance with the technical standard of the import country.

7.5. If goods are reshipped to us for reasons for which we cannot be held responsible, we charge a handling fee of 5% of the net delivery value or at least € 15.00.

7.6. In case we concluded a contract on the production of goods and/or in case we owe the installation of the goods, the customer shall be obliged to accept the goods manufactured and/or the services provided in accordance with the terms of the contract, unless acceptance is excluded due to the condition of the goods. Acceptance may not be refused on grounds of insignificant defects. The goods are also deemed accepted if, after completion of the goods, we have set the customer an appropriate time limit for the acceptance and the customer has not refused acceptance within this time limit, stating at least one defect.

7.7. Insofar as acceptance is required the purchased goods are deemed accepted once

- delivery and, insofar as we also owe installation, installation is completed,
- we have informed the customer about this, while advising him of the fictitious acceptance in accordance with section 7.6, and have requested him to effect acceptance,
- twelve working days have elapsed since delivery or installation or if the customer has started to utilize the goods (e.g. if he has put them into operation) and if, in this case, six working days have elapsed since delivery or installation and

if the customer has failed to effect acceptance within this period of time for another reason than a defect about which he has informed us, which renders the utilization of the purchased goods impossible or which adversely affects it to a significant degree.

7.8 In the event the customer defaults, consideration shall be immediately payable. If the customer is in default or if he culpably violates any other obligations to cooperate, we are entitled to demand compensation insofar as we have incurred damages as a resulted of this, including any possible additional expenses. In addition, we reserve the right to assert further claims. The rights following from § 642 of the German Civil Code (BGB) shall remain unaffected.

8. Warranty and limitation

8.1. Immediately after delivery to the customer or to the third party determined by him the delivered goods shall be carefully inspected pursuant to § 377 of the German Commercial Code (HGB). They are deemed accepted by the customer with regard to apparent defects or other defects, which would have been noticeable in the course of an immediate and careful inspection, unless we receive a written notification of defects within seven days after delivery. With regard to any other defects the delivered goods are deemed accepted by the customer, if the seller does not receive a notification of defects within seven working days after the point of time at which the defect came to light; however, if, in case of normal utilization, the defect was evident at an earlier time, this earlier point of time shall be decisive with regard to the commencement of the time limit for submitting a notification of defects.

8.2. In case of material or legal defects we shall have the right to rectify such defects or to supply a defect-free item (supplementary performance); the manner of supplementary performance shall be at our discretion. However, we shall only be liable if the defect is significant in nature. In the event one of these two or both kinds of supplementary performance should be impossible or out of proportion, we are entitled to refuse it. We may refuse supplementary performance as long as the customer does not honour his payment obligations towards us to the extent that corresponds with the defect-free part of the works.

8.3. We accept no liability for damages as far as they occur due to the following reasons:
Improper or inappropriate use, faulty assembly by the customer or by a third party, natural and usual wear and tear, incorrect or negligent treatment, excessive strain, inappropriate operating resources, defective construction works, inappropriate foundation ground, chemical, electrochemical or electrical influences (unless we are responsible for them), inappropriate changes or maintenance works by the customer or a third party that were not previously approved by us.

8.4. As far as sales of used items are concerned warranty is excluded. Where new goods are sold the right to assert a claim due to defects shall expire by limitation one year after delivery of the sales items and/or after one year in case of a contract which is honoured by manufacturing an item or by installing it.

8.5. Assurances and guarantees shall only be deemed effective if we grant them expressly and in writing.

9. Liability to pay damages for fault

9.1. Compensation claims of customers – unless something else follows from the provisions stipulated below – are excluded.

9.2. In all cases of contractual and non-contractual liability we shall be liable to pay compensation or reimburse futile expenses only in the event of intent and gross negligence in accordance with statutory regulations. This limitation of liability shall also apply to liability resulting from a violation of obligations of our legal representatives, organs or vicarious agents.

9.3. In other cases we shall only be held liable – insofar as this section does not stipulate otherwise – if a contractual obligation, which is essential in order to be able to properly fulfil of the contract and in whose compliance the customer may generally rely (so-called cardinal obligation), is violated and such liability shall be limited to the compensation of the foreseeable and typical damage. In any and all other cases our liability is excluded subject to the provision stipulated in this section.

9.4. Our liability for damages resulting from harm inflicted to life, limb or health, pursuant to the Product Liability Act (ProdHaftG) and the effective data protection rules shall remain unaffected by the above limitations of liability and exclusions of liability.

9.5. The limitations of liability following from sections 9.1. to 9.4. shall not apply insofar as we maliciously concealed the defect or insofar as we issued a guarantee for the condition of the goods. The same shall apply insofar as we have come to an agreement with the customer concerning the condition of the goods.

9.6. In case of liability for simple negligence our compensation obligation for property damage is limited to € 5,000,000.00 and for further pecuniary damages resulting thereof to the amount of € 100,000.00 each per damage case (in compliance with our present amount of cover by our product liability insurance or liability insurance), even if it is a case in which an essential contractual obligation is breached.

10. Final provisions

10.1. Unless stated otherwise in the order confirmation the place of fulfilment shall be our company headquarters in Delmenhorst.

10.2. The place of jurisdiction for all conflicts resulting directly or indirectly from this contract is our company headquarters in Delmenhorst. We shall also be entitled to bring an action against the customer at the customer´s place of general jurisdiction.

10.3. All legal relations between the customer and us shall be exclusively subject to the laws of the Federal Republic of Germany; the United Nations Convention on Contracts for the International Sale of Goods is excluded.

(as of April 2022)