

General Terms and Conditions of Sale, Delivery and Payment of CELLTHERM Isolierung GmbH

I. Scope of our terms and conditions

The contract is subject exclusively to our General Terms and Conditions of Business; we expressly contradict deviating purchasing terms and conditions of the customer. If the terms and conditions of the customer exclude a contradiction, then the statutory provisions take the place of contradicting terms and conditions.

II. Scope of deliveries

1. For the delivery scope, our written order confirmation is decisive, and the offer if we make an offer that is accepted in due time if no order confirmation is received in due time. Ancillary agreements and changes require our approval in writing.

2. Drawings, illustrations, dimensions, weights or other performance data are only binding if they are listed in our order confirmation or in the offer accepted in due time.

3. Unless we are obligated to assemble, unloading the goods from the transport vehicle is the concern of the customer.

III. Prices

1. Unless specially agreed otherwise, our prices are inclusive packaging and transporting the goods to the business domicile of the customer or to the place specified by him or to the dockside for deliveries to German islands or to the German border for deliveries abroad, as well as transport insurance in the usual scope.

2. The respective amount of statutory VAT is added to the prices.

3. Unless stated otherwise, we hold ourselves bound to the prices stated in our offer or order confirmation for 30 days as from their date.

4. In the case of contracts with an agreed delivery time of more than 4 months, we reserve the right to increase prices in accordance with increased wages or material prices. The customer has the right to cancel if the increase is more than 5% of the agreed price.

IV. Delivery time

1. Delivery dates or deadlines that can be bindingly or non-bindingly agreed must be set out in writing.

2. An agreed delivery deadline is fulfilled if the delivery item has left our factory or has been notified as ready for shipment by that time.

3. The delivery period prolongs appropriately in the case of measures concerning labour disputes, especially strikes and lockouts, and in the case of unforeseen hindrances outside our scope of influence if said hindrances provably have considerable influence on completion or shipment of the delivery item. This applies also if such circumstances come about at our sub-suppliers. We are also not answerable for the aforesaid circumstances if they arise during an already occurred default. In significant cases we will notify the beginning and end of such hindrances to the customer at the earliest possible time.

4. If shipment is delayed at the wish of the customer, then the costs for storage, at least 0.5% of the invoice amount per month of storage in our factory, starting from one month following notice of readiness for shipment will be charged to the customer. However, following the grant and fruitless expiry of a subsequent period, we are entitled to dispose over the delivery item otherwise and deliver to the customer with an appropriately longer delivery period.

5. Compliance with the delivery period presupposes that the contractual obligations of the customer are fulfilled.

6. If we are answerable for non-compliance with bindingly assured due periods and dates or if we are in default, the claim of the customer for default damage compensation is limited to one half percent for each week of default, but at most 5% of the invoice value of the deliveries and services affected by the default. Claims above and beyond this are excluded unless the default was caused by at least gross negligence on our part.

7. We are entitled to perform partial deliveries and services at all times.

8. We are entitled to demand compensation for the damage we incur if the customer is in default with acceptance; the risk of coincidental deterioration and coincidental destruction of the delivery item passes to the customer as soon as the acceptance default comes into being.

9. We are entitled to withdraw from the contract if the customer withdraws from the contract for reasons for which we are not answerable or if he does not accept our performance despite a set period to comply. If the ordered performance is a standard product, the damage compensation flat rate is 20% of the order value. The damage compensation flat rate for customized products is 70% of the order value.

V. Passage of risk

1. The risk passes to the customer at the latest with handover of the delivery items to the transport enterprise, and this even then if partial deliveries are made or if we have assumed other performances, e.g. shipment costs or export or assembly.

2. If shipment is delayed due to circumstances for which the customer is answerable, then risk passes to the customer as from readiness for shipment; however, we are obligated to arrange the insurance demanded by the customer at his wish and expense.

3. Notwithstanding his rights from Section VI, the customer must accept delivered items even then if they show insignificant defects.

4. The customer must evidence that a defect already existed prior to passage of risk. This does not apply in case of malicious deceit or wilful conduct or in the case of a defect that could not have been caused by interventions in the goods by the customer or third parties.

5. Inasmuch as we are also commissioned with assembly of the delivery item, we are entitled to demand a visual acceptance by the customer on the day the assembly is completed. Visible defects must be recorded in a protocol that must be signed by both parties. If no visual defects of the goods exist according to the protocol, then we have no liability whatsoever in this respect in future. The same applies if the customer does not fulfil the visual acceptance in due time. If defects are recorded in the protocol, we obligate ourselves to remedy them promptly.

VI. Liability for redhibitory defects

1. Obvious defects must be complained within one week as from receipt of the delivery item. Inasmuch as the customer is a merchant, unobvious defects must be complained within one week following their discovery. Complaints any later are excluded. Defects must be complained in writing. The defects must be described as precisely as possible.

2. If a defect falls within our scope of responsibility, we may at our own discretion deliver subsequent performance by remedying the defect or by substitute delivery in accordance with the statutory provisions. In the case of defect remedy, we are obligated to assume all expenditure, especially transport, travel, labour and material costs necessary to remedy the defect inasmuch as these do not increase due to the fact that the delivery item has been removed after delivery to a place other than the place of fulfilment or inasmuch as fittings by third parties must be removed or rebuilt.

3. Following consultation with us, the customer must accord us the time and opportunity to undertake all defect remedy measures or substitute deliveries that we at our own discretion deem necessary, otherwise we are released from liability for defects. Only in urgent cases of hazard to operating safety and to avert disproportionately high damages, whereby we must be informed immediately, or if we are in default with the remedy of a defect, does the customer have the right to remedy the defect himself or have it remedied by a third party and demand from us reimbursement of the costs necessarily incurred.

4. If the remedy of a defect fails after our third subsequent improvement attempt or if we are not prepared or unable to remedy the defect or make substitute delivery or if this is delayed beyond appropriate deadlines due to reasons for which we are answerable, then the customer is entitled to withdraw from the contract or demand a reduction of the purchase price.

5. Claims of the customer above and beyond this, especially damage compensation claims including lost profits or due to other economic losses, are excluded.

6. The foregoing liability limitation does not apply if the damage caused is founded in wilful conduct or gross negligence on our part or in cases of injury to life, limb or health.

7. Inasmuch as deviating agreements have not been made, the warranty period for liability for redhibitory defects is 12 months as from shipment of the delivery item. The same due period also applies to claims for compensation of consequential damages inasmuch as no claims are asserted on the grounds of unlawful conduct.

8. In the case of passing on our deliveries and performances within the framework of consumer goods sales, the customer is obligated to firstly immediately forward to us complaints and subsequent performance demands of the end-consumer for scrutiny and remedy before further rights of recourse can be asserted.

9. No warranty is given for damage caused by the customer himself due to unsuitable or improper use, erroneous assembly or taking into operation by the customer or third parties, erroneous or careless handling, damage to the lacquered surface and corrosion due to this, unsuitable operating resources, chemical or physical influences, failure to observe the assembly, operating and maintenance instructions by the customer or third parties, and due to effects of parts of third party origin and natural wear and tear (especially on parts subject to wear such as e.g. seals, door locks or hinges).

10. The provisions under Section VI., 2.-4. do not apply to delivery items used outside Germany. In such cases we give a 12-month material and parts guarantee. We do not assume other expenditure for the purpose of remedying defects, especially transport, travel and material costs.

VII. Reserve of proprietary rights

1. We reserve ownership of the delivered goods until receipt of all payments from the total liabilities arising from the business relationship. In the case of behaviour by the customer in breach of contract, we are entitled to recover possession of the delivered items. Recovery of possession or attachment of the conditional commodity does not constitute withdrawal from the contract.

2. The delivered goods may not be pledged or assigned as security without our approval. In cases of attachment or other access of third parties, the customer must inform us immediately in writing and accord us all assistance necessary to safeguard our rights.

3. The customer is entitled to resell or fit the delivery items subject to our reserved proprietary rights. For this case, the customer herewith assigns to us his purchase price claims against his buyer or his claim for remuneration for work against his principal to the amount of our claim. We herewith accept the assignment. We revocably empower the customer to collect the claims assigned to us in our name for our account. We are entitled to notify the assignment to the buyer or principal and to revoke the authorisation to collect as soon as the customer is in arrears with payment or an agreed partial payment. In this case, the customer is obligated on our demand to disclose to us the names and addresses of his buyers or his principal, as well as the data and scope of delivery agreements concluded with them.

4. We obligate ourselves to release the collateral to which we are entitled at the demand of customer inasmuch as the value of our collateral is more than 20% above the value of the claims to be collateralised.

VIII. Payment

1. Our invoices are due for payment within 30 days of invoice date without deduction. Thereafter we are entitled to demand default interest of 8% over the respectively applicable basic interest rate. If we can evidence higher default damage, then we are entitled to assert this.

2. Despite terms of the customer worded otherwise, we are entitled to credit payments of the customer firstly against his older debts and will inform the customer of the type of netting undertaken. If costs and interest have already been incurred, then we are entitled to credit the payments firstly against the costs, then against the interest and finally against the main claim.

3. The customer is only entitled to a right of netting if his counterclaims are lawfully established, uncontested or acknowledged by us.

4. A payment is not considered as made before we can dispose over the amount. In the case of cheques, payment is not considered as made before the cheque is finally redeemed.

5. If we gain knowledge of circumstances that call the creditworthiness of the customer into question, especially if he does not redeem a cheque or discontinues his payments, then we are entitled to declare the entire remaining debt to be due, even if we have accepted cheques. In this case we are moreover entitled to demand that still pending deliveries are only made against advance payment or provision of collateral. We are entitled to withdraw after an appropriate subsequent period. Thereafter we can prohibit the resale of the goods delivered under the reserve of proprietary rights and demand that they be returned or that direct ownership be transferred at the expense of the customer.

IX. Liability limitation

1. We and our vicarious agents are only obligated to damage compensation due to breach of contract, culpa in contrahendo or from unlawful acts in the case of wilful conduct or gross negligence, unless life, limb or health are affected.

2. Any liability - also for lack of assured characteristics - is limited to the damage foreseeable at contract conclusion.

3. In every case our liability under product liability law and other claims from producer liability remain unaffected.

X. Place of fulfilment, place of jurisdiction, applicable law

1. Place of fulfilment is our registered place of business.

2. Place of jurisdiction for all contentions arising from and in connection with a delivery, also for cheque or bill of exchange claims, is the Local Court Gronau/Westphalia or the Regional Court Münster if the value in contention exceeds the competence of the Local Court.

3. Exclusively German law applies, also for deliveries outside Germany or for a foreign customer. The provisions of contract law of the United Nations Convention on Contracts for the International Sale of Goods (CISG) do not apply.

4. As from 1 June 2005, exclusively these General Terms and Conditions of Business shall apply for newly concluded contracts.

5. The invalidity of one of the foregoing provisions does not affect the validity of the other provisions. The corresponding statutory regulation shall apply in place of the invalid provision.