

STADLER®

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Terms and Conditions of Stadler Anlagenbau GmbH

Preamble:

Our General Terms and Conditions, as amended, apply to all the present and future contractual relationships we enter into with the customer. In other respects, German law including the German technical specifications applies exclusively. European standards govern plant engineering and construction outside the Federal Republic of Germany. Customers' general terms and conditions are valid only if we expressly accept them.

The contract language with our company is German. If texts have to be translated into other languages or from other languages, the customer bears this expense separately.

1. Offer and scope of supply and services

The customer may disclose our offer and accompanying documents to third parties only if we have given our express consent. The same applies to all contract documents we make available to the customer. We retain the right of ownership and copyright to these documents.

We are bound to our offers for 6 weeks maximum from the date of issue. The exact scope of supply and services then follows from the order confirmation. If work not specified in the offer or order confirmation has to be carried out, we have a right toward our customer to separate payment.

If we have specified certain manufacturers' units in our offer, we are entitled to use other manufacturers' units when executing the contract, if they are equivalent.

2. Delivery time, default

The agreed delivery time commences only when all the technical details have been resolved and the customer has met all the requirements for performance and assembly. These include that the respective rooms have been prepared for the assembly, all the necessary paperwork including the countersigned order confirmation is at hand, the necessary approvals have been granted, the due payments on account have been made and security, if any, has been furnished.

If delivery periods or a fixed delivery date are agreed, they are prolonged to a reasonable extent if delays are due to labour disputes, force majeure, lacking supplies of material, sickness of personnel, failure to settle an outstanding payment obligation on the customer's part or other circumstances beyond our direct control.

We enter into default if, after expiry of a scheduled delivery date, we have been set a reasonable period of at least 2 weeks and this period has not been used for contractual performance.

If we fall behind schedule because our suppliers fail to deliver on time, we are not liable for this delay.

3. Delivery of the system, acceptance

During delivery and assembly, the customer has to provide us with the necessary power at the customer's expense, together with the connections required. We have the right to free-of-charge use of the customer's utilities and equipment (hoists, fork lift trucks, among others). The rooms have to be prepared for the assembly by the customer and at customer's expense, and all sources of danger have to be eliminated. In particular, all combustible materials have to be removed. It is the customer's responsibility to attend to the necessary static conditions and the official approvals. If applicable, the customer has to obtain an approval for work on Sundays, public holidays and at night. The subsurfaces have to be suitably rugged and able to take load commensurate with the system. We must be allowed the possibility to undertake assembly work uninterrupted, including over weekends, on public holidays and at night.

If a contracting partner calls for a formal acceptance, this must take place immediately after completion of the assembly. Acceptance can be withheld only if there are grave defects. If nobody calls for a formal acceptance, the system is deemed to be accepted following 6 days of use, but 12 days after assembly at the latest. If the issue of a CE, A or B declaration forms part of the contract, they will be handed over upon acceptance.

4. Obligation to pay, security, offset, assignment

The customer has to pay the agreed remuneration under the contract for work and services as follows:

40% after conclusion of a contract, 50% after readiness to deliver is reported and 10% after completion. Our invoices are payable by bank transfer, without deduction and exempt from charges, within 10 days of the invoice date. If insurance cover for our customer cannot be granted by our credit insurer, we are entitled to call for our customer to provide security in the form of a directly enforceable guarantee of a German bank or credit insurance institution. The guarantee sum must correspond to our anticipated claim for remuneration.

Offset with counterclaims by the customer is barred, unless the customer's claims are undisputed or have been recognized by declaratory judgement.

The customer is not permitted to assign its claims against us to third parties.

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5. Warranty, Liability

The customer must assert apparent defects in writing with in 14 days from performance and assembly. Later complaints are excluded and cannot be recognized.

We must be notified without delay of any defects of the system. If the customer fails to fulfil its duty to inform and such failure results in further defects or damage, they will not be for our account.

In case of justified complaints, the customer has a right to rectification of defects. If rectification repeatedly fails, is not carried out within a reasonable period or we refuse it, then the customer has a right to a reduction in price or a claim for damages. Rescission of the contract is barred.

We are obliged to carry out necessary rectification work only on working days during normal business hours. For carrying out the rectification work, the customer has to provide us, free of charge, with unhindered access to the system, power and, if appropriate, personnel to explain the defect to us and to assist in the rectification work.

For damage or loss incurred not on the delivery item itself, we are liable – no matter on what grounds – only if we, our legal agents and persons we use to perform our obligations act with intent or gross negligence, if culpable injury to life, body, health and personal freedom is involved, in case of defects which have been concealed with an intent to deceive or whose absence has been expressly guaranteed and if, in case of ordinary and minor negligence, fundamental contractual obligations have been violated by us, our legal agents or persons we use to perform our obligations.

Quantities specified in the offer relate to pre-sorted and average material. The material qualities specified in the offer can be attained only in case of a homogeneous composition of input.

The warranty period is 1 year, 3,000 operating hours maximum.

Excluded from the warranty are the expendable and wearing parts specified in the offer.

6. Premature contract termination

If, before production of the system begins and before substantial materials for the system are ordered, the circumstance – for which we are not responsible – arises that all or part of the contract will not be performed, the customer will owe us 15% of the gross order value from the part of the contract not to be performed, unless the customer proves that we have not accrued such a right or not to that extent.

7. Special duty of the customer

From the beginning of the assembly work it is the customer's duty to provide, at its own expense, a firewatch team to guard the work site round the clock.

8. Jurisdiction, other provisions

All disputes are subject to the exclusive jurisdiction of the local court (Amtsgericht) or regional court (Landgericht) of Ravensburg, Germany, depending on the value in dispute, insofar as the contracting party is a businessman or a legal entity under public law. This also applies in case of contracting parties not having a domestic place of general jurisdiction and in the event that, after contract conclusion, our customer moves its domicile or usual place of abode outside the Federal Republic of Germany or the customer's usual place of abode is unknown at the time when legal proceedings are instituted.

If individual contract terms or parts of the contract terms are ineffective, this will not affect the validity of the remaining terms and conditions.

9. Provisions for delivery contracts

Unless stipulated otherwise below, the foregoing provisions apply analogously if the customer does not make any call on assembly services but only purchases machines, units, spare parts or other goods (referred to as materials).

In this case the customer is obliged to collect the materials from our premises or to have them collected. The risk of accidental loss passes to the customer as soon as the materials are ready for collection.

The customer cannot call for acceptance as defined in item 3 of the General Terms and Conditions. On the contrary, the customer is obliged to immediately inspect the supplied materials and to promptly give notice of any defects.

Our materials are supplied subject to retention of title.

The customer is entitled to re-sell the goods subject to retention of title in the course of ordinary business as long as the customer is not in default towards us. The customer hereby assigns to us all claims arising from the resale of the goods subject to retention of title. If the customer re-sells the goods subject to retention of title together with other goods, then he assigns to us the claim from the resale equal to the proportion of the invoice value of the goods subject to retention of title to the invoice value of the other goods. The customer is revocably authorised to collect the claims from the resale. This right lapses should the customer be in default towards us. At our request, the customer is obliged to inform its buyer of the assignment and to give us the information necessary for enforcing the claim.

If the value of the existing security exceeds our claim by more than 20% in all, we are obliged to release securities to that extent, at our option.

As at: 01/2009

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