

## Standard Terms and Conditions of General provisions

### 1. General provisions

1.1 These Terms and Conditions shall apply to all contracts for the sale, purchase and delivery of goods and services which we supply, to the exclusion of any other terms save where we expressly agree to a variation of the applicable terms and conditions in writing. We shall not be bound by any other standard terms or conditions on the part of the buyer deviating from our own Standard Terms and Conditions of Sale and Delivery. These Standard Terms and Conditions of Sale and Delivery shall also apply notwithstanding the fact that we affect deliveries to the buyer without any reservations in spite of being aware of provisions in the buyer's terms and conditions which are contrary to or deviate from our own Standard Terms and Conditions of Sale and Delivery.

1.2 For the purposes of ongoing business relations, our Standard Terms and Conditions of Sale and Delivery shall also apply to future deliveries and services notwithstanding the fact that they may not have been expressly acknowledged.

### 2. Offers

2.1 Our offers are subject to change without notice and shall be construed as constituting an invitation to treat.

2.2 The disclosures on dimensions, weights, output and the like contained in catalogues, brochures, circulars, advertisements, diagrams, price lists and other documents shall be deemed to be approximate only and not binding unless we expressly agree to be bound by them.

2.3 We reserve the right to make any improvements or modifications to the product differing from the details specified in any offers or brochures provided that they do not adversely affect the purpose of the contract and are reasonably acceptable for the buyer.

2.4 Models, samples, drawings, plans, descriptions, calculations, offers and other documents shall remain our property and be subject to our copyright. They may not be disclosed to any third parties.

### 3. Order

3.1 The order constitutes an offer by a buyer to purchase the goods and services in accordance with these terms and conditions.

3.2 The buyer agrees to be bound by its order for a period of four weeks starting with the date on which the order is sent.

3.3 The order shall only be deemed accepted when we issue a written acceptance of the order or execute the order, whichever comes first. At this point a contract shall come into existence.

3.4 The contract constitutes the entire agreement between the parties. The buyer acknowledges that it has not relied on any statement or representation made or given by us which is not set out in the contract.

3.5 Ancillary agreements, modifications made orally or over the telephone or any additions to orders already confirmed shall be binding only if expressly agreed to by us in writing.

### 4. Price and Payments

4.1 The price of goods shall be the price set out in the order, or, if no price has been agreed upon, the price set out in our published price list on the day of delivery.

4.2 In the absence of anything to the contrary in the confirmation of order, our prices are quoted "ex works" or "ex warehouse" net of packaging, freight, any transport lock requested by the buyer, as well as assembly and operating materials, which shall be invoiced separately.

4.3 Our prices are quoted net of value added tax ("VAT"), which shall be itemised separately in the invoice at the statutory rate prevailing on the date of invoice. The buyer shall, on receipt of a valid VAT invoice, pay us such amounts in respect of VAT as are chargeable on the supply of the goods.

4.4 We may invoice the buyer for the goods at any time after completion of delivery.

4.5 In the absence of any agreement to the contrary, payment shall be due immediately upon delivery of the goods and receipt of the invoice or equivalent statement of payments due. In any event, the buyer shall pay the invoice within 30 days of the invoice. Time is of the essence.

4.6 Means of payment other than cash or bank transfers shall be accepted only subject to prior agreement and even then only as conditional payment. If payment is made by cheque or bill of exchange, the payment obligation shall not be deemed to have been discharged until the cheque or bill of exchange has been duly honoured. Upon acceptance of a bill of exchange, payment shall be deemed to have been deferred only provided that this has been expressly agreed in writing. All interest, costs and taxes shall be for the buyer's account. In the event of any default of payment, without prejudice to other remedies available to us the purchase price shall be subject to simple interest at a rate of 8% per annum from the due date for payment until payment is made.

4.7 Discounts or rebates may only be applied if this has been agreed upon in writing. Cash discounts may only be taken if we receive all payments due under the order within the specified period.

### 5. Payment, default, netting of counterclaims

5.1 If the buyer is in default of collection of the goods by more than one month, we shall be entitled to recover the storage costs which we incur as a result of such default. If we store the goods in our own warehouse, the buyer shall be liable for the storage costs at the normal market rate which would be charged by a third party for storage.

5.2 If the buyer is in default of collection of the goods, the risk of loss of or damage to the purchased goods shall pass to the buyer upon default of acceptance or payment arising.

5.3 The buyer may not net any counterclaims or exert any right of retention or right to withhold performance. This shall not apply if such rights of netting or retention relate to counterclaims which are not disputed or which have been upheld in a court of law.

### 6. Delivery

6.1 In some circumstances we cannot set a date for delivery until submission by the buyer of the necessary documents, approval or releases and no earlier than remittance of any prepayment agreed between us. We will deliver the goods to the location set out in the order or such other location as is agreed ("Delivery Location") at any time after we have notified the buyer that the goods are ready. Delivery of the goods shall be completed on the arrival of the goods at the Delivery Location.

6.2 Any dates quoted for delivery are approximate only and the time of delivery is not of the essence. We may deliver by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the buyer to cancel any other instalment.

6.3 The delivery period shall be reasonably extended in the event of any actions arising from industrial disputes, including but not limited to strikes and lockouts, as well as upon the occurrence of acts of God and unforeseeable hindrances which are beyond our control, to the extent that it can be proven that such hindrances exert a significant effect on the production and delivery of the goods to be supplied. This shall also apply if our own suppliers are affected by such events and hindrances.

6.4 If the circumstances referred to in clause 6.3 impair our operations to such an extent that execution of the order is rendered impossible, we may rescind the contract. In the event of any of the aforementioned circumstances occurring, we shall be additionally entitled to rescind the contract if the cost of executing the order is substantially out of proportion to the buyer's interest in having the order executed.

6.5 If the delivery period is exceeded, we shall not be deemed to be in default of delivery until the passage of a further period of 14 days. In the event that we are in default of delivery, the buyer shall have the following remedies:

a) Liability shall be limited to the lesser of (i) the costs and expenses incurred by the buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the goods. The Supplier shall have no liability for any failure to deliver the goods to the extent that such failure arises due to the circumstances referred to in clause 6.3 or the buyer's failure to provide us with adequate delivery instructions or any other instructions that are relevant to the supply of the goods, or, ii)

the amount of entitlement to damages in the event of any default of delivery shall be limited to half a percent of the net purchase price of the delayed parts per week of default or any part thereof, provided that this does not exceed 5% of the total net purchase price.

b) Otherwise, our liability shall be governed solely by clause 9.

### 7. Dispatch and transfer of risk

7.1 In the absence of any express agreement to the contrary, we shall select the route, the method

of dispatch and the carrier at our own discretion. In this connection, we shall not be under any obligation to select the cheapest route and method of dispatch.

7.2 The risk in the goods shall pass to the buyer on the goods' arrival at the Delivery Location. If dispatch is delayed due to circumstances for which the buyer is responsible, risk shall pass to the buyer as from the day on which the goods are declared to be ready for dispatch.

7.3 Title to the goods passes to the buyer upon payment in full for the goods. Until title to the goods has passed to the buyer, the buyer shall maintain the goods in a satisfactory condition and keep them insured against all risks for their full price from the date of delivery.

### 8. Warranty

8.1 We warrant that the goods supplied are free of any faults in their design, the materials used and workmanship in the light of current technical capabilities in accordance with the technical standards applicable in the UK. This warranty is given for 12 months following the transfer of risk in the goods to the Buyer, or 2,000 operating hours in the case of air-cooled compressors, or 1,000 operating hours in the case of water-cooled compressors whichever is sooner ("**Warranty Period**")

8.2 No claims shall be accepted under this warranty in the following cases:

- Inappropriate or improper use;
- Failure to observe the operating or storage instructions;
- Dismantling or modifications without our approval;
- Improper positioning;
- Use of parts other than original Sauer spare parts;
- Natural wear and tear;
- Unsuitable fuels;
- Inadequate maintenance.

8.3 We shall be liable for parts of the machinery which we source from our own suppliers only to the extent that they grant us warranties of their own.

### 9. Limitation of Liability

9.1 Nothing in these conditions shall limit or exclude our liability for:

- death or personal injury caused by our negligence;
- fraud or fraudulent misrepresentation;
- breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- death, personal injury or loss or damage to property caused by defective products pursuant to the Consumer Protection Act 1987; or
- any matter in respect of which it would be unlawful for the supplier to exclude or restrict liability.

9.2 Subject to clause 9.1:

- the supplier shall under no circumstances be liable to the buyer for any loss of profit, or any indirect or consequential loss arising under or in connection with the contract; and
- the supplier's total liability to the buyer in respect of all other losses arising under or in connection with the contract or in relation to the supplier's negligence shall in no circumstances exceed £1,000,000, being the level of insurance cover we have obtained in relation to such liability. In relation to all other torts or claims the supplier's liability is limited to the amount of its relevant insurance policies. The buyer is responsible for making its own arrangements for insurance of any excess loss or losses not intended to be covered by the supplier.

9.3 Subject to the other provisions of these conditions, the buyer shall examine the goods supplied by us immediately after receipt and notify us of any faults within ten days. In the absence of the receipt of any such written report, the goods shall be deemed to have been accepted.

9.4 In the event of any faults in the goods delivered, we shall repair or, at our discretion, replace all parts which exhibit faults or are materially impaired in their suitability for their intended purpose. This is limited to defects which materialise during the Warranty Period as a result of any circumstances arising prior to the transfer of risk. Replaced parts shall become our property. If dispatch, assembly or start-up of the machinery is delayed for reasons beyond our control, liability shall expire no later than 12 months after the date on which risk passes. In the case of material externally sourced parts, our liability shall be confined to assigning to the buyer the rights accruing to us against the supplier of such externally sourced parts. We shall be deemed to have duly complied with our duty to supply replacements for faulty parts upon releasing the corresponding part for transportation (regardless of whether this is by ship, by rail, by air or by any other means) carriage paid to Colchester, it being agreed that the buyer shall be responsible for onward transport, assembly/integration of the part and any other necessary actions.

9.5 The buyer shall only be entitled to rescind the contract or demand a reduction in price if repairs are not possible, several attempted repairs fail to produce the desired results or the repairs or replacement deliveries cannot be carried out within 3 months of notification of the fault. Claims for damages, including but not limited to compensation for loss or profit or other indirect or consequential losses are excluded in their entirety.

9.6 Warranty claims shall be time-barred upon the expiry of the Warranty Period.

### 10. Retained ownership rights

10.1 We shall retain all rights to the goods delivered pending receipt of all payments due under the contract. In the event of any breach of contract on the part of the buyer including but not limited to default of payment, we shall be entitled to recover the goods. Such recovery shall not be deemed to constitute rescission of the contract by us unless we expressly declare this in writing. Seizure of the goods shall always be deemed to constitute rescission of the contract by us. After recovering the goods, we shall be authorised to liquidate them as we see fit and to apply the proceeds from such liquidation to the amounts due from the buyer less reasonable liquidation costs.

10.2 The buyer undertakes to treat the goods carefully and, in particular, to insure them at their replacement value against the risk of fire, water and theft at its own expense. If any maintenance or service activities are necessary to maintain the goods, the buyer shall arrange for these to be done regularly at its own expense.

10.3 The buyer shall notify us immediately in writing in the event of any third-party seizure or other intervention so that we may protect any continuing interest in the goods. The buyer shall indemnify us against all court and other costs incurred to protect our interests which are not recoverable from a third party.

10.4 The buyer may resell the goods as part of its ordinary business activities but agrees to assign all receivables due from its buyers or third parties equalling the final invoice amount (including value added tax) on our receivable arising from the resale of the goods regardless of whether the goods are resold in processed or non-processed form. The buyer may collect this receivable notwithstanding the fact that it has been assigned to us. This shall not prejudice our right to collect the receivable ourselves. However, we undertake to refrain from collecting the receivable as long as the buyer complies with its payment obligations from the proceeds collected, is not in default of payment and, particularly, has not lodged any application for the commencement of insolvency, bankruptcy or creditor settlement proceedings or has not suspended its payments. Otherwise, we may demand that the buyer disclose to us the amount of the receivables assigned to us and the names of the persons owing them, provide all information required to collect the receivables, produce all the related documents and inform the third-party debtors of the assignment.

10.5 If the goods delivered are inseparably combined with other objects not belonging to us, we shall acquire co-ownership rights in the new end product commensurate with the value of the goods delivered (final invoice value including value added tax) relative to the other goods combined as of the date of such combination. If the goods are combined in such a way that the buyer's goods can be assumed to constitute the main item, the buyer shall assign pro-rated co-ownership rights to us. The buyer shall exercise the resultant sole or co-ownership rights on our behalf.

### 11. Data protection

11.1 Each party shall, at its own expense, ensure that it complies with and assists the other party to comply with the requirements of all legislation and regulatory requirements in force from time to time relating to the use of personal data and the privacy of electronic communications, including (i) the Data Protection Act 2018 and any successor UK legislation, as well as (ii) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to data protection and privacy (for so long as and to the extent that the law of the European Union has legal effect in the UK) ("**Data Protection Legislation**").

11.2 Without prejudice to the generality of clause 11.1, each party will take the necessary steps to keep all personal data secure in accordance with the Data Protection Legislation, and in particular:

- (a) each party shall ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (b) each party shall ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential;
- (c) each party shall notify the other without undue delay on becoming aware of a personal data breach.

For further information please see our PRIVACY NOTICE.

#### **Governing Law and Jurisdiction**

- 12.1 The Contract and any dispute arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.
- 12.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute arising out of or in connection with this contract or its subject matter or formation (including non- contractual disputes or claims)

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