

Terms and Conditions for the international Sale of Products from Germany to foreign Countries of ZACHER Leiter- und Steigtechnik GmbH, Dresden ("we")

§ 1 Scope of Application

1.) The following terms and conditions govern the international sale of all ZACHER products. These terms and conditions apply in commercial use with business Customers in the sense of Art. 310 Ss. 1 of the German Civil Code (BGB). By accepting the delivery of our products the Customer agrees to be bound by and accepts these terms and conditions. Any additions, supplements, modifications or alterations are valid only if we expressly agree in writing. These terms and conditions apply unless the Customer has signed a separate formal agreement with us. We reserve the right to change these terms and conditions from time to time without prior written notice, at our sole discretion.

2.) These terms and conditions apply also if we perform the Sale without reservation, even if the Customer usually uses different terms and conditions which might differ from those contained herein.

3.) These terms and conditions also apply if we send a written confirmation to an order which was made by phone or telecommunication and if the Customer does not immediately contradict.

§ 2 Orders – Order Documents

1.) Any agreement on the sales of products is valid if we send a written order confirmation to the address indicated by the Customer, but becomes valid also if we deliver the products to the Customer according to the order.

2.) Our quotations are free for us and not binding until we give a written order confirmation or deliver. If by mistake an error concerning the product, the price or the availability is contained in a quotation we will notify the Customer as soon as possible. The Customer then may confirm the changed agreement. Otherwise we are free to invalidate the deal without further consequence, such as e.g. damages.

3.) If the order of the Customer is to be qualified as offer according to Art 145 German Civil Code, then for 2 weeks we are free to accept it, unless the Customer indicates otherwise.

4.) We reserve all IP rights on any pictures, drawings, calculations and any other documents. This also applies to all informations which are marked "confidential". The Customer shall not transmit any documents to third persons without our prior written consent.

5.) The proper choice and dimensioning of the products remains in the Customers own responsibility and is the sole risk of the Customer.

§ 3 Prices – Conditions of Payment

1.) Unless something different is stipulated in the order confirmation, our prices are "ex works" or "ex warehouse". Packages are billed separately. All transfer costs shall be born by the Customer, including those for returns, unless in cases of justified warranty. Any agreements on free delivery are valid only when made in writing.

2.) If, after the execution of the agreement on the sale of products, our costs become higher or lower, we are entitled to adjust our prices in a reasonable way. If the Customer so demands, we will provide proof for such cost alterations.

3.) All prices are valid in the currency which is indicated. Unless anything else is agreed upon, they are in Euros (€).

4.) Our price lists at the time of signing the agreement or, if no written agreement is signed, at the time of delivery are relevant.

5.) VAT (as well as any other taxes, duties, levies or fees or other similar charges) are not included in our prices. VAT (etc.) will be indicated in the invoice separately to the amount relevant at the date of the invoice.

6.) Any deductions of payments are valid only if agreed upon beforehand in writing.

7.) Unless anything else is stipulated in the order confirmation (e.g. advance payment or cash), the Customer shall pay all invoiced amounts, without offset, within 30 (thirty) days of our invoice date. Invoices for spare parts or repairs are to be paid immediately.

8.) The payment term is deemed to be revoked and payment is due immediately, if the Customer did not pay earlier deliveries in due time. The same applies if cheques are not cashed in, if the Customer is late with payments, gets insolvent or if any state procedures due to that get opened against him, or if his values are seized or if after signing the agreement or delivery circumstances become known to us which lead to reasonable doubts on the financial standing of the Customer.

9.) All payments and cheques will be calculated to the amount in which they irrevocably reach our bank account, with deduction of any transfer-, cash in- or discount charges.

10.) Payments to our employees or commercial agents are deemed not to be payments to us.

11.) Payments are deemed to be performed on that day, when we can freely dispose of it without loss.

12.) The Rules of delay in performance of the German Civil Code shall apply. The minimum interest in case of default of payment is deemed to be at 12 (twelve) per cent per year out of the outstanding amount, without prejudice to any other claims we may have.

13.) Set-offs are permitted only with claims of the Customer which are confirmed by a court, or uncontested or acknowledged by us. Set-offs are permitted only if the counter claim arises out of the same contractual relationship.

§ 4 Transfer of Risks; Costs

1.) Unless something different is stipulated in the order confirmation, the Parties agree on delivery "ex works" ("EXW" Incoterms 2000).

2.) Packages are chosen by us. For taking back packages, special agreements are to be made.

3.) If on request of the Customer we agree to send the products to another place than our factory (in such case "FCA" Incoterms 2000 shall apply), the risk for deterioration or destruction of the products (also by chance) as well as for payment of the price passes over to the Customer, as soon as we hand over the product to the carrier, unless in a case of gross negligence or intent. If the Customer explicitly so requests we will enter into a transport insurance on his behalf; costs resulting thereof have to be born by the Customer.

§ 5 Time of Delivery

1.) The time of delivery indicated by us is subject to the condition that all technical questions linked to the products are cleared. All indications of delivery times are just approximations, unless otherwise explicitly agreed upon.

2.) Our performance is furthermore subject to the fulfilment of all duties of the Customer (e.g. payment advances, necessary specifications and informations). We reserve the defence of lack of performance of the Customer.

3.) If we do not keep in the agreed upon terms of delivery, we shall hold the Customer harmless and come up for damages by paying 0,5 % of the value of the outstanding delivery by each completed week of default, but in no case we shall be responsible for more than 5 % of the value of the complete order, unless in a case of gross negligence or intent.

4.) If we can not deliver because of reasons which we could not foresee or influence (e.g. labour strikes, interruption of operations, of transports or of deliveries, measures of state authorities, or such like – also if our suppliers are concerned), then the term for delivery is deemed to be prolonged correspondingly. In such a case we will agree on a new delivery term with our Customer. If in such a case an end is not foreseeable within 4 months, both sides are entitled to cancel the order without any further consequences or claims.

5.) If the Customer fails to accept delivery in due time or does not come up by his fault to any other contractual duty, we are entitled to demand damages including potential higher costs. In such a case we reserve all further claims and rights. If the conditions for default of acceptance are met, the danger of deterioration or destruction of the product, also by chance, passes over to the Customer. The Customer then has to pay even if he can not receive the (entire) product.

§ 6 Limited Warranty

1.) We do warrant that the products are properly described in the product descriptions and can be used for the purposes described therein. However, the technical descriptions of the products do not give any guarantee statement. Any guarantee is subject to our specific written statement. We are not responsible in which way ever for that the described technical characteristics of the products would suffice for the purposes of the Customer, unless we expressly do confirm so in written form.

2.) We shall deliver the product as agreed upon, provided that we are entitled to make necessary or useful alterations to the product if technical progress so indicates and provided that the contractual purpose, for which the product was purchased, can be accomplished.

3.) Any warranty claims of the Customer are subject to the condition, that the Customer did properly check-up the product for any kind of defect immediately when receiving or getting control on it and did immediately give written notification about any detectable defect to us, as stipulated in Art 377 German Commercial Code, 8 days maximum, and the product is still in the status of delivery.

4.) Warranty is excluded for any defects or damages which are due to any improper use, other than explained in the operation or maintenance instructions, to any faults in storage or operating, or to any negligence of the Customer. Warranty is excluded also for fire, lightning, explosions, electricity excesses, humidity and other reasons which are not caused by the product and beyond our control. We also do not warrant for any parts which get normally deteriorated by usage.

5.) If the Customer extinguishes or manipulates serial numbers or seals of any kind, including any signs which give proof on technical qualifications or references of any kind, or without our knowledge and acceptance causes any manipulations in the products, all warranty claims are excluded.

6.) If the Customer states defects which are not true, we are entitled to claim for damages for our searching endeavours and tests. Damages notably consists of labour and other costs.

7.) To certify the product identity the invoice and warrant shall be presented when claiming defects and warranty. Products shall not be sent back to us without our expressly declared prior approval.

8.) If a defect is justified, the Customer may claim for repair or replacement. In such a case we will decide to our discretion which way of remedy we choose. We will bear all necessary costs, especially transport-, labour- and material costs to a maximum amount equivalent to the purchase price. We will not bear such costs if these were higher because the product was transported to another place than our factory in case of delivery ex works or free carrier.

9.) If repair or replacement do not succeed in a product free of defects, whereby we are entitled for 2 attempts, the Customer at his option is entitled to lower the price to a reasonable degree or, if the defect is not only unessential but really relevant, to rescind the purchase agreement.

10.) We accept responsibility according to the legal rules of German law, if the Customer rises claims due to intention or gross negligence, as well of ourselves as of those which we use to fulfil our contractual obligations. Unless in cases of intention, liability is restricted to foreseeable damages, which usually do happen and in any case shall not be higher than the contractual purchase price.

11.) We also accept responsibility according to the legal rules of German law, if by our fault we do not fulfil a cardinal contractual obligation, i.e. one which would be essential for the agreement, or if we expressly guaranteed a certain quality of a product which is missing, provided that the guaranteed quality would have prevented the damage. Also in such a case, unless in cases of intention, liability is restricted to foreseeable damages, which usually do happen and in any case shall not be higher than the contractual purchase price.

12.) The limitation period for all claims is 12 (twelve) months and commences with the passing over of the risk. This term starts anew for such products or parts of a product, which was remedied by us. For remedied products or parts of a product, the stipulations contained in these Terms and Conditions for new products equally shall apply.

13.) The product liability for any harms to life, body or health remains unrestricted; this also applies for any obligatory liability according to product liability law.

§ 7 EXCLUSION

1.) ANY AND ALL LIABILITY OR DAMAGE CLAIMS BEYOND THE REMEDIES SET FORTH IN THESE TERMS AND CONDITIONS ARE EXCLUDED, NO MATTER OUT OF WHAT LEGAL REASON. NO OTHER WARRANTY, WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED BY US OR MAY BE INFERRED FROM A COURSE OF DEALING OR USAGE OF TRADE. WE ALSO DISCLAIM ALL IMPLIED WARRANTIES OR CONDITIONS INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. IN NO EVENT SHALL WE BE LIABLE TO THE CUSTOMER OR ANY THIRD PARTY FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES, EVEN IF ADVISED FOR THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM OF A THIRD PARTY.

2.) INSOFAR LIABILITY ALSO IS EXCLUDED ON BEHALF OF SUCH PERSONS WHICH WE USE TO FULFIL OUR CONTRACTUAL DUTIES, OUR WORK FORCE, EMPLOYEES AND AGENTS.

§ 8 Retention of Title

1.) Property does not pass over to the Customer until all deliveries out of the concerning sales agreement or any other deals before or parallel are completely paid for by the Customer.

2.) The Customer agrees to do anything which might be necessary according to national or local law to lead the retention of title provisions contained herein to success and shall contribute any legal instrument to confirm the retention of title. Should any national or local legal precondition not be met, which would preview any formal necessities for the retention of title clause to be successful, then the Parties consider it as being of good faith and fair dealing, that they shall be treated as if they had sufficed to the demands in question. The Parties shall not claim the invalidity of this retention of title clause because of such reasons.

3.) If the Customer does not come up to his contractual duties, especially in cases of default of payment, we are entitled to demand the Customer to return the products free of any costs to us. In taking back the products we step back from the sales agreement. When we took back the product we are entitled to dispose of it, e.g. by selling to a third party for any price which is not unreasonable. The profit from disposing in such a way shall be deducted from the Customer's obligations to us, whereby costs of disposing shall first be deducted.

4.) The Customer shall handle the products with care and shall dispose of them only in the setting of a normal, legal and acceptable business, excluding risky bargains and sale-and-lease-back bargains.

5.) The Customer shall keep the products insured on his costs against fire, water and theft in a sufficient way and to the value of a new product. If we demand so the Customer shall give proof to us about insurance. The Customer assigns all rights out of the insurance to us with the day of signing the sales agreement or of delivery.

6.) If maintenance and inspection works are necessary, the Customer shall have these done on his costs.

7.) If the products are seized or in any other cases of interferences of third parties, the Customer shall give immediately a written information to us, so that we can raise legal objections. If the third party is not capable of reimbursing all costs to us, the Customer shall pay for the gap.

8.) The Customer is entitled to sell the product in the normal and due course of his business. However he already now assigns to us all claims for payment, which arise out of selling the product to third parties to the amount of the invoice (including VAT), no matter if the Customer had processed the products or not. The Customer remains entitled to cash in the payments, however our right to cash in the assigned claims remains unaffected. We will not cash in as long as the Customer comes up to his obligations to pay to us out of the profits of selling the products to third parties, does not come in default with payments, does not get insolvent, his goods are not seized and no insolvency procedures are started against him. In such a case the Customer shall, on our demand, give immediate information on the assigned payment claims, his clients coordinates and all further informations which are necessary to successfully cash in the payment claim, including also the hand over of all

useful documents and giving information to his client. Our right to cash in legally does not depend on those conditions being met.

9.) The processing or transformation of the product is done by the Customer for us and on our behalf. If the product is inseparably joined with other items, we become owner by shares or co-owner according to local law to the degree of the value of the product (invoice amount including VAT) at the time of joining together. For the new item the same rules as for the original product apply.

10.) If the product is inseparably mixed up with other items, we also become owner by shares or co-owner according to local law to the degree of the value of the product (invoice amount including VAT) at the time of joining together. For the new item the same rules as for the original product apply.

11.) The Customer takes care of the new item on our behalf.

12.) The Customer also assigns to us all claims which might arise when he installs the product within the property of a third party so that the latter acquires the property, especially a house or other building or ground.

13.) We shall give free our security rights if the realisable value of our securities exceeds the amount of all our claims against the Customer for more than 10 (ten) per cent. We are free to choose which security we abandon. For the evaluation of securities our net list price at the time of the demand to give free is relevant. If it concerns claims against third persons, a security deduction of 30 (thirty) per cent is to be made. If the client of the Customer is already late with payment or if there are informations which give sound reason to believe that this will happen, then the security deduction amounts to 50 (fifty) per cent. In cases of processing, transformation or mix up, the security deduction amounts to 30 (thirty) per cent.

14.) All products or items delivered for testing and presentation purposes remain our property. A use beyond testing or presentation is allowed only if agreed upon beforehand in writing. If the agreed time of usage is over, the Customer shall render immediately all delivered products or items free of costs to us.

§ 9 Other Provisions for Payments

1.) The Customer shall pay within the terms agreed upon in the agreement or indicated in the invoices.

2.) Deductions from payments will be accepted only (i) if the Customer until the date of the invoice is not in default with any payment due to us, and (ii) to an amount of 2 % of the amount of the invoice, and (iii) if the rest of the amount is paid completely within 14 days after the date of reception of the invoice, and (iv) if the amount indicated in the invoice is higher than 50,-- Euros.

3.) In cases, where we agreed upon payment on deferred terms, the complete outstanding amount becomes due at once, if the Customer is in default with 2 or more instalment payments.

§ 10 Intellectual Property Rights

1.) We reserve all rights in all illustrations, drawings, calculations and all other documents. This applies also to such documents, which have not been designated as "confidential", but confidential by their nature and relevance.

2.) All such documents shall be treated by the Customer as confidential information and shall not be handed over to any third party without our prior written approval.

3.) We reserve all rights for damages, including our rights out of Sec. 97 of the German Law on the Rights of the Author ("Urhebergesetz").

§ 11 Jurisdiction of the Courts – Place of Performance

1.) The exclusive international and territorial jurisdiction shall be with the Courts who have local jurisdiction for our seat of business. However we are also entitled to pursue the Customer at his seat of business.

2.) Unless anything else is agreed upon, our seat of business is the place of performance.

3.) The contractual relationship shall be governed by German law. The CISG shall not apply.

§ 12 Other Provisions

1.) The handling of the business is performed by us with the support of electronic data processing. The Customer expressly agrees to the necessary use of his data which became known to us in the course of the business and for business purposes in this way. The Customer also agrees that we may use his data for commercial purposes according to the German law on Data Protection.

2.) If one or more provisions contained herein should be or become invalid, the remaining provisions shall not be in any way be affected or impaired thereby. The invalid provisions shall be replaced by such legal provisions which come up to the closest possible measure permitted by law to the invalid rulings the Parties did intend.

3.) When using the words "and" and "or" usually no alternative is excluded; singular implies plural and vice versa; headings are just for convenience.

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