

# Bopp & Reuther Sicherheits- und Regelarmaturen GmbH - Mannheim-Waldhof

## General terms of Delivery and Performance

### I. Extent of Deliveries and / or Performances

1. The extent of deliveries and / or performances is determined by the written order confirmation of the seller.
2. The seller reserves the right to make design changes as far as such changes do not prejudice essential interests of the purchaser with regard to intended use known to the seller.
3. Sub-agreements require to their effectiveness the written confirmation by the seller. This requirement in written form can only be abrogated by a written agreement from both sides.
4. The seller unrestrictedly reserves the property- and exploitation rights in copyright matters of calculation, design and other documents. They may only be revealed to third parties after previous written consent of the seller, in case that the order will not be placed or be finished, designs and other documents related to the offers have to be returned on demand immediately to the seller. The same applies accordingly to documents of the purchaser with the exception that the documentations may be made accessible to such third parties, whom the seller has transferred deliveries or performances.

### II. Price and Payment

1. The prices are valid for delivery ex works without packing in case of domestic deliveries and performances the value added tax in the legal amount at the time being will be added.
2. The prices are commensurate with the general costs prevailing at the time of the order acceptance. Should the cost factors change till the agreed delivery -resp. performance date, e.g. the relevant standard wages or the prices of raw materials should change-up, the seller may increase the price by the amount of the additional costs actually arisen.
3. All payments have to be effected in European EUR currency on the banking accounts indicated on the seller's note-paper. At the presentation of cheques or bills of exchange, their redemption will be valid as payment only.
4. In case of agreed payment by instalments the seller is entitled at non-payment of just one due rate or at bill protest, at suspension of payments of the purchaser or at other circumstances substantiating serious doubts on the fulfillment of the agreed instalments by the purchaser, to require immediate payment of the whole contract price without regard of agreed maturities. In such a case the seller may cancel the order by registered letter and may hold back the delivery items remained in his property according to section V., as well as require indemnity of the damage occurred. For the safe-guarding of the above-named rights of the seller no legal measures will be needed. In any case the full purchase price is payable not later than 90 days after delivery, irrespective of any formal acceptance test or start-up of production that might have been stipulated.
5. The retaining of payments or the offset of counterclaims of the purchaser, contested by the seller, are not admissible.

### III. Terms for Deliveries and/or Performances

1. The observance of the times for deliveries and/or performances provides that all documents to be submitted by the purchaser, necessary approvals, releases and other provisions are submitted in time, that the purchaser has fulfilled the payment conditions and possible obligations to perform first and all remaining suppositions especially of technical kind are brought forth for the contract execution. If these suppositions etc. are not fulfilled in time, an adequate extension of delivery time will take place.
2. The delivery time is deemed to be observed:
  - a) at deliveries without erection or assembling, if the delivery has been dispatched or collected within the term; in case that the delivery is delayed because of reasons within the purchaser's control, if notification of the dispatch readiness has been made within the agreed time.
  - b) at deliveries with erection or assembling, as soon as this has taken place within the agreed time.
3. The delivery time will be reasonably extended in case of measures related to labour disputes particularly owing to strike, lockouts or other interruptions of operation, at mobilization, war, riots, waste of an essential workpiece, delay in delivery of

essential raw materials and parts as well as related to other unforeseeable events beyond the seller's control, if these impediments entail or influence the failure to comply with the delivery time. The circumstances mentioned above are still deemed to be beyond the seller's control if they may arise during an already existing delay of delivery time. At non-observance of the delivery time by other reasons as mentioned above, the purchaser, in as far as he substantiates a damage in this extent, may demand a penalty for delay for every completed week of delay of 1/2% of the value of that part of delivery or performance, which cannot be taken in useful operation on account of the delayed completion, however not more than 2,5% at maximum. Any additional rights or claims of the purchaser on account of non-observance of the delivery time are excluded, especially compensation claims, even upon termination of an eventually stipulated additional respite. This does not apply in cases of intention or gross negligence on the part of the seller's. The right of the purchaser for withdrawal upon in-effective expiration of a respite remains unaffected.

### IV. Passing of Risks

The risks will be passed to the purchaser even in case freight-free delivery has been stipulated :

- a) At delivery, when the delivery was brought to dispatch or was collected. The packing takes place according to commercial usage. The dispatch will be carried through at cost and risk of the purchaser.
- b) At delivery with erection or assembling, on the day of the take-over on the premises of the purchaser, provided that the take-over follows immediately the assembling or erection being ready for operation. Should the purchaser not accept the offer of take-over, the risk passes to the purchaser upon expiration of 14 days as from this offer.
- c) If the dispatch, the delivery or the start or the execution of the erection or the assembling is delayed on demand of the purchaser or by other reasons under his control, when the dispatch, delivery or start-up was originally scheduled. On demand and at the cost of the purchaser, the seller is willing to effectuate insurances required by the purchaser.

### V. Retention of Title

1. The goods shall remain the property of the seller until full settlement of all payments as well as the fulfillment of all other claims arising from this order are effected. Any treatment, processing or working-up of the goods involved as well as its joining to or combination with extraneous objects by the purchaser or third parties shall be deemed to be made on behalf of the seller. On newly created products the seller shall have the co-ownership, according to his participation in the value of the delivery article.
2. The purchaser is obliged to insure the delivery object at his cost against insurable damages. With placing of the order the purchaser assigns claims for eventual insurance benefits for safety's sake to the seller to the extent of the order price. He has to advise the insurer and inform the seller accordingly. The reassignment shall be deemed to have tacitly taken place with the complete payment and compliance of all other claims of the order by the purchaser.
3. The purchaser is not entitled either to pawn or to transfer the ownership by way of security. The purchaser has to inform the seller immediately in case of levies of execution, seizure attachments or other jeopardize by third parties with forwarding of copies of the relevant documents (e.g. bailiff's return). The cost of an eventual intervention of the seller will be to the debit of the purchaser.
4. In case that the purchaser will sell the delivery objects before the complete payment of the purchase price, he has to assign to the seller together with the placing of the order, his claims from the reselling to the extent of the purchase price with adding of 10% collecting payment for security. The same applies if the purchaser will sell the delivery objects to one or several purchasers together with other goods, not belonging to the seller, without or after working-up or insertion into another article. The seller will not collect such claims as long as the purchaser complies in the prescribed form with payment- and other

obligations. On demand of the seller the purchaser has to indicate the debtors of the assigned claims, these to advise about the assignment and to keep separately the collected sales-returns for the seller

5. In case that the value of the existent securities for the seller will exceed his claims about more than 16 % in total, the seller is willing, on demand of the purchaser, to release or to retransfer the exceeding securities at his choice.

6. In case that the legislation which the delivery objects underly, does not allow the retention of title, but will allow the reserve of similar rights on the delivery objects, these similar rights will be deemed to have been agreed upon between purchaser and seller. The purchaser has to participate in measures which the seller will take for the protection of his property and similar security rights on the delivery objects. Hereto as well as for the observance of the obligations mentioned in this paragraph, the purchaser may be urged without further reminder by a preliminary injunction or by corresponding legal measures. Besides this, the seller is entitled without further reminder to damages or to cancellation of the order.

#### **VI. Acceptance**

Delivered objects have to be accepted by the purchaser, even if having slight flaws. Deliveries in part are admissible.

#### **VII. Liability for Defects**

For any defect of the delivery objects including the absence of special features expressly warranted, the seller is liable as follows.

- a) All those parts or performances will at the seller's option be reconditioned, newly delivered or newly constructed free of charge, having been discovered as considerably impaired in their usefulness, within 6 months in normal one-shift operation (or within 3 months with multiple-shift operation), counted from the day of the passing of the risk (compare IV), owing to a circumstance in existence before the passing of the risk, especially owing to faulty construction, bad material or inferior execution. The statement of such defects has to be reported to the seller immediately in writing, not later than 8 days after discovery.
- b) For the reconditioning of the defects the purchaser will concede the seller reasonable time and occasion. In case of refuse by the purchaser the seller is discharged from the warranty for defects.
- c) Only in urgent cases of endangered operating safety of which the seller must be informed immediately, or with previous written consent of the seller, the purchaser may remove any defect himself or have it removed by a third party and may ask the seller for an adequate reimbursement of his expenses.
- d) For essential goods not originating from seller's own production, the liability of the seller at first shall be restricted to the assignment of his claims against the supplier of these goods. Only by non-assertion of these claims the liability of the seller arises in the above extent.
- e) The right of the purchaser to raise claims because of defects will in all cases be excluded after 6 months from the date of the timely raised claim. This period of time as well as the regulated term in a) above will not apply as far as compulsory law prescribes longer periods of time.
- f) In context of the reconditioning or the new production of deficient delivery or performance parts, the seller will bear the cost of the replacement piece, including the dispatch, adequate cost of the disassembling and mounting as well as the accrued expenditures for eventually necessary delegation of personnel. All other costs are borne by the purchaser.
- g) The seller is not liable for damages by inappropriate utilization, faulty mounting, repairing or maintenance by the purchaser or third parties or on account of wear and tear.
- h) For reconditioning, replacement deliveries or performances the same warranty of the seller applies as for the original deliveries and performances. The warranty period is extended by the time of interruption of work for those parts, which could not be operated efficiently on account of

reconditioning-resp. replacement work. Replaced parts will become the property of the seller.

- i) If the seller lets expire the allowed additional period of time, without eliminating the defect, the purchaser may ask for cancellation of the contract or reduction of the compensation.
- j) Further claims of the purchaser against the seller or his agents are excluded, especially claims for damages other than those of the delivered objects themselves. This does not apply for the liability of the seller by intention or gross negligence.
- k) The stipulations of this paragraph apply accordingly to such claims of the purchaser for reconditioning, compensation delivery or compensation performance resulting out of propositions or advices given by the seller in connection with the order or by violation of contractual by- obligations.

#### **VIII. Impossibility, Contract Adaption**

- a) If it becomes impossible for the seller to execute the delivery or performance or for the purchaser to fulfill his obligations, the general principles of law will apply with the following provision: If the impossibility is due to a fault of the seller, the purchaser is entitled to require payment of damages. However, this payment is limited to 10% of the value of that part of the delivery or performance, which on account of the impossibility cannot be used for efficient operation. Further claims of the purchaser are excluded. This does not apply if the seller is liable by intention or gross negligence. The right of the purchaser for cancellation of the order is not affected.
- b) If unforeseeable events in the sense of paragraph III cl 3 considerably change the economical significance or the content of the delivery or performance or will considerably affect the production of the seller, the order will be adequately adapted as far as required by good faith. If this is not economically justifiable, the seller has the right to cancel the order. In case he wants to use this right after realization of the extent of the event he has to inform the purchaser immediately even if at first an extension of the delivery-time was agreed upon.

#### **IX. Other Claims**

Claims for damages of the purchaser because of breach of contractual or quasi-contractual obligations or of tortious act are excluded. This does not apply for liability by intention or gross negligence of the seller. This limitation accordingly applies to liabilities of the purchaser.

#### **X. General Provisions**

1. Unique Court of Jurisdiction is, if the purchaser is fully qualified merchant, the domicile of the seller, for all controversies resulting, directly or indirectly out of the contractual relationship. The seller is also entitled to sue the purchaser at his domicile .
2. Supplementary to these terms of delivery and performance, the German Law shall apply to all contractual relations.
3. These terms of delivery and performance shall remain valid also in the event of cancellation or legal inefficacy of some or any of the provisions.
4. Changes of the contract require the written form, which only will be transactionable in writing.