

1. Agreements

1.1 The following Terms and Conditions shall exclusively form the basis for all of our deliveries and services. Purchasing conditions of the Customer are herewith explicitly rejected. Silence on our part shall not amount to an acceptance of any such conditions we receive. Quality, technical feasibility and date/time of delivery shall be deemed to have been agreed only when such details have been confirmed by us in writing. This shall also apply to any agreements that amend these Terms and Conditions.

1.2 Any objections to order confirmations or invoices must be raised by the Customer in writing within one week of receipt. Such objections shall not release the Customer from payment obligations.

1.4 All our obligations arising from these business relations and from any individual agreements shall be subject to proper and timely delivery to us, insofar we are not responsible for the failure to deliver, in particular in the case of a congruent hedging transaction.

2. Prices

2.1 All prices are net cash ex works or warehouse. We shall charge the prices that are valid on the day of delivery; this shall only not apply in the case of delayed delivery on our part. In this case the prices that were valid until the delay in delivery shall apply.

2.2 If the prices of our upstream suppliers change, we shall be entitled to adjust our prices accordingly. All supplementary charges, public charges and subsequently incurred taxes, customs duties, freight costs or other increases and surcharges – even if these are incurred by the upstream suppliers – which either directly or indirectly affect the deliveries and make them more expensive shall be borne by the Customer, unless this is ruled out by statutory regulations. If it is not possible to adapt an agreement or should this not be reasonably acceptable for the affected party to the Agreement, this party shall be entitled to withdraw from the Agreement.

2.3 Freight free prices shall only be valid under the precondition of open and unhindered transport with any envisaged means of transport on railways, roads and waterways.

2.4 The Customer shall bear the cost of dead freight; this shall only not apply if we have offered freight free prices and the Customer is not responsible for the dead freight.

2.5 The costs for packaging and for the freight costs for sending back the packaging material shall be borne fully by the Customer.

3. Payment Terms

3.1 The payment shall be due within 10 days after the invoice date. Thereafter we shall be entitled to charge the costs incurred by taking out credit, and these costs shall at least amount to the statutory interest on payments in arrears.

3.2 The Customer shall only be entitled to a right of retention regarding counterclaims from the same contractual relationship. Setting off by the Customer against counterclaims shall be ruled out, insofar as these counterclaims have not been undisputedly or legally recognised.

3.3 As far as previously agreed we may accept cheques and bills of exchange as payment. Bills of exchange shall only be accepted on the basis of a separate written agreement. Subject to their receipt, the bills of exchange shall be credited on the day on which we definitely have this money at our disposal. We reserve the right to return a bill of exchange at any time. Liability for proper protesting against a bill of exchange shall be ruled out. The Customer shall bear the stamp, discount and collection costs. All costs, expenses and taxes incurred through the acceptance of bills of exchange or cheques shall be borne by the Customer.

3.4 All debt claims must be paid immediately if our payment terms are not observed or if we become aware of circumstances which are capable of reducing the creditworthiness of the customer, respectively if the customer has stopped payments or an application is made to open insolvency proceedings or if bills of exchange or cheques are not honoured. In this case we shall be entitled to demand advance payment for any outstanding deliveries and after an appropriate period of grace demand compensation instead of performance or replacement of futile expenditures. The right of rescission shall remain unaffected by this.

3.5 In the event of payment default on the part of the customer, we shall be entitled to rescind any individual contract or all contracts with the Customer in accordance with the statutory regulations. Should we exercise our right of rescission, we shall be entitled to claim and charge a contractual penalty amounting to 10% of the net value of the order; this shall not affect our right to have our delivery returned.

3.6 We have the right to set-off our claim to payment against those of the Customer and against those of companies with which the Customer is corporately affiliated, regardless on what legal grounds – as settlement of interest , if necessary -, even if the respective claims are due at different dates. Where relevant, this entitlement on our part shall relate to the debit balance only.

4. Quality, Dimensions, Weight

4.1 Deviations in dimensions, weight and quality shall be allowed within the framework of German industrial standards for steel and iron, respectively any other international standards or the standard commercial practice. Other quality regulations and the right to check and inspect shall require a separate agreement.

4.2 The dimensions measured by our upstream suppliers or by ourselves at our warehouse shall be used for the calculation.

4.3 No guarantee shall be provided for a specified quantity of units, bundles or packages.

5. Dispatch and Risk

5.1 Goods that have been declared ready for dispatch must be fetched immediately. We shall otherwise be entitled to store the goods according to our discretion and charge them as delivered ex works or warehouse. The same shall apply if the goods cannot be dispatched because of traffic congestion or other circumstances for which the Seller is not responsible. As soon as the transportation vehicle arrives at the place of destination it must be immediately unloaded, respectively immediately made available for further use.

5.2 Once the goods have been handed over to the forwarding agent or carrier, or at the latest as soon as it leaves the works or warehouse, the risk – including seizure– shall in any case be transferred to the Customer, also in the case of fob or cif transactions. Furthermore, if no other provisions are stipulated, the respective versions of Incoterms shall apply.

5.3 If there are no specific written instructions, we shall be entitled to choose the type of transportation and transport route, and any liability for this shall be ruled out.

5.4 Unless otherwise stipulated, the material shall be delivered unpacked and not protected against rust.

5.5 Should the Customer delay acceptance of the goods and we consequently claim compensation, we shall be entitled to demand lump sum compensation amounting to 10% of the net value of the order, unless the Customer proves that we have not incurred any damage or if only negligible damage has been incurred. We shall also be entitled to claim further compensation.

6. Delivery Times, Delivery Dates

6.1 We shall only confirm non-binding delivery times and delivery dates. The agreement of binding delivery times and dates in an individual case shall require our explicit written confirmation. We accept no obligation

to forward in due time.

6.2 The delivery times and delivery dates shall only apply on condition that all details of the order have been completely clarified in due time and also any required official certifications and documents from domestic and foreign authorities have been provided in due time. If upstream suppliers do not comply with their delivery times, our delivery times shall be extended accordingly. Our delivery times and delivery dates refer to the time of dispatch from the supply works or warehouse.

6.3 The delivery times shall be deemed as having been met as soon as notification is given that the goods are ready for dispatch even if they cannot be dispatched in due time without any fault on the part of ourselves or the supply works.

6.4 The agreed delivery time shall be extended – notwithstanding our rights arising from the Customer defaulting – by the amount of time the Customer delays in fulfilling obligations based on this Agreement or any other agreement.

6.5 We shall be entitled to make reasonable partial deliveries to the Customer and to dispatch goods from works and warehouses other than those that were agreed.

6.6 The Customer shall not be entitled to claims for damages for non compliance with delivery dates or delivery times, insofar as this is not caused by gross negligence or wilful violations of our obligations or those of our vicarious agents.

7. Export Provision

Goods that are not explicitly sold for export are not allowed to be taken in unprocessed form to regions outside the scope of application of the European Union. Insofar the contractual penalty provisions of our upstream suppliers shall apply accordingly.

8. Acceptance

8.1 If an acceptance is necessary or has been agreed upon before dispatch of the Goods, the Customer shall bear all the costs of this, in particular the official, objective and own acceptance costs.

8.2 If special quality regulations are stipulated, the Customer must carry out an acceptance at our request.

8.3 If the acceptance is not carried out in due time or if it is incomplete, we shall be entitled to dispatch the goods without acceptance or to store them at the Customer's cost and risk. As soon as the Goods are dispatched or put into storage all the risks and costs shall go to the Customer. In this case we are entitled to invoice according to clause 3.

9. Terms of Delivery

9.1 Should the performance incumbent on the Agreement be seriously hindered or prevented, for example due to circumstances of force majeure such as industrial disputes in the form of strikes or lockouts, mobilisation, war, plant stoppages, import and export bans, raw material and energy supply problems, fire, traffic barricades, a disturbance or shortage of means of transport, epidemics, pandemics or other circumstances and/or their consequences which are unforeseeable, extraordinary or outside our control, including when such circumstances occur regarding our upstream suppliers or one of their sub-contractors, the delivery period shall be suitably extended to cover the period of hindrance. If this amendment of the Agreement is not possible or is unreasonable, the disadvantaged party to the Agreement shall be entitled to rescind the contract. All deliveries or partial deliveries which are not affected by the above mentioned circumstances shall be accepted by the Customer .

9.2 The Customer shall be entitled to request an explanation on whether we are going to deliver during the reasonable period of grace or withdraw from the Agreement. If we do not explain our intentions, the

Customer shall be entitled to rescind the contract in part of non delivered Goods within a reasonable time limit.

9.3 The explanation provided by our upstream suppliers shall be deemed adequate proof that we are prevented from fulfilling our obligations as stipulated in provision 9.1.

10. Defects and Liability

10.1 The point in time when the goods leave our warehouse or the supply works shall be authoritative for determining whether the condition of the goods complies with contractual stipulations.

10.2 As soon as the goods are received the Customer must immediately check them for transportation damage and missing quantities; any defects detected must be confirmed by the transport company. Insofar as such defects are recognisable, notice must be given within a week of receiving the goods regarding any other defects (this also includes the failure to comply with an agreed quality) as well as deviations in quantities and wrong deliveries, precisely stipulating the defects in writing. Defects that are not recognisable in a proper inspection must be reported in writing within a week of being discovered. If the above periods for reporting defects are not complied with, claims based on defects shall be ruled out.

10.3 Processing, resale or repair of goods reported as defect shall be deemed as unconditional renouncing of the customer's rights resulting from breach of warranty against defects, even after such rights have been asserted.

10.4 The Customer shall be obligated to immediately provide us with samples of the rejected materials upon request. Should the Customer fail to provide us with an opportunity to convince ourselves of the defects, and in particular if the customer fails to immediately provide the rejected material or samples of it when requested, rights resulting from breach of warranty against defects shall be forfeited.

10.5 Rejections of partial deliveries do not entitle the Customer to refuse the remaining delivery.

10.6 In the case of justified notifications of defects which occur during the period allowed for filing complaints regarding defects and which are filed in due time, we shall decide whether to provide replacements or improve the goods. Should the replacement delivery be justifiably rejected by the Customer, the Customer shall have the right to a reduction of the purchasing price or right of rescission from the contract. Other than the right of rescission the Customer shall not be entitled to any further claim for damages because of the defect.

10.7 As long as the Customer has not fulfilled the contractual obligations, we shall be entitled to refuse to remedy the defects.

10.8 For companies the warranty period is one year from dispatch of the goods; in the case of building constructions and objects which are used in accordance with their usual purpose for a building construction and have caused its defectiveness, this shall be five years after being handed over, unless the Ordinance on the Granting and Contracting of Building Work (VOB/B) as a whole is applied.

10.9 In the case of minor negligence regarding the failure to fulfil obligations, our liability shall be restricted to direct average damage foreseeable for the type of goods and typical for the contract. This shall also apply to minor negligence regarding the failure to fulfil obligations by our employees or vicarious agents. We shall not be liable for minor negligence regarding the failure to fulfil unimportant contractual obligations. The above restrictions on liability shall not affect the rights of the Customer arising from product liability. Furthermore the liability restrictions shall not apply in the case of bodily harm or damage to health attributable to us or in the event of loss of life of the Customer or a third party as well as the taking over of a warranty or the lack of an agreed property.

10.10 Claims for damages of the Customer on the basis of a defect shall be time barred a year after the goods are delivered. This shall not apply to consumers or if we are guilty of fraudulent intent.

10.11 The burden of proof shall lie with the Customer

10.12 Should we be incapable of remedying the ascertained defects in an appropriate way through improvement, or if it is technically impossible to remedy them, we shall be entitled to withdraw from the contract, notwithstanding the rights of the Customer.

11. Reservation of Title, Security Interests

11.1 Our goods shall remain our property until payment of all our claims for payment vis-à-vis the Customer arising from the business relationship, regardless of what legal grounds they are based on, even if payments have already been made for specially designated claims. The reservation of title on the basis of these Terms and Conditions shall also remain in force if individual claims of the Customer are received in a current account, where the balance is used for payments or acknowledged.

11.2 For us the finishing and processing of the products for which the title has been reserved is carried out in the sense of Section 950 of the German Civil Code (BGB) without placing us under any obligation. The finished goods are deemed to be reserved-title goods to the amount of the value of the invoice in the sense of provision 11.1.

11.3 In the case of the Customer processing, combining or mixing the reserved-title goods with other goods we shall be entitled to co-ownership of the new goods in relation to the ratio of the invoice value of the reserved-title goods compared to the invoice value of the other goods used. The co-ownership that arises from this shall apply as reservation of title in the sense of provision 11.1.

11.4 The Customer shall only be entitled to sell our property in conventional business transactions at his normal business conditions and as long as his payments are not in arrears on condition that he agrees a reservation of title in the sense of these Terms and Conditions.

11.5 The Customer shall now already transfer his claims from the resale of reserved-title goods together with all ancillary rights. The transferred claims from the respective sold reserved-title goods shall serve as our security to the amount of the respective invoice value. Should the reserved-title goods be sold together with other goods not belonging to us – whether this is without or after processing, mixing or combination – the transfer of the claims from resale shall be limited to the amount of invoice value of the respective sold reserved-title goods, respectively the sale of goods of which we have co-ownership shall be limited to the amount of the invoice value of this co-ownership or to the co-ownership parts of them.

11.6 The Customer shall be entitled to collect claims from resale until a revocation of this provision, which shall be authorised at any time. We shall only exercise our right of revocation in the cases cited above in provision 3.4. The Customer shall not be entitled to transfer the claims to third parties. Upon request the Customer must immediately inform his customers of the transfer of claims to us and provide us with all the information and documents necessary for collecting due payments.

11.7 We must be immediately informed of any levies of attachment or impairments of the reserved-title goods or any of our other security rights. If the value of our securities, including the possibilities for setting off claims, exceeds the secured claims by more than 30 % in the long term, we must release securities according to our choice if the Customer requests this.

11.8 The Customer must notify us at all times about any products for which title has been reserved that are in his inventory, and also indicate where they are being stored and what pre-processing or processing state they are in. We shall be entitled to inspect these goods at any time.

11.9 In the case of violations, in particular violation of obligations regulated by this provision and provision 3, we shall be entitled to take back the goods – in addition to any other rights. After taking back the goods we must explain to the Customer within an appropriate period of time whether we are going to rescind the contract and demand compensation for loss suffered or replacement of futile expenditures. We shall be

entitled to make use of any goods we have taken back by selling them privately for setting off against our claims.

12. Place of Performance and Place of Jurisdiction

12.1 The place of performance for all freight-free deliveries shall be the supply works or our warehouse.

12.2 Insofar as our contractual partners are merchants, legal persons under public law or special public assets, Düsseldorf, Germany shall be agreed as place of jurisdiction for all claims. However, we shall be entitled to also pursue our rights at the place of jurisdiction of the Customer.

12.3 German law shall apply with the exemption of the UN Convention on the International Sale of Goods (CISG).

13. Severability Clause

Should individual provisions of the Terms and Conditions of Sales and Delivery be completely or partially illegal, ineffective or invalid, this shall not affect the effectiveness of the other provisions.

14. Data protection

The Customer acknowledges that, on account of this contract, we store his personal data for the purpose of automated processing (invoicing, bookkeeping, etc.) No other personal data besides those contained in this contract shall be stored.

BARTHEL Kesselrohre Boilertubes GmbH