

# GENERAL TERMS OF SALE AND DELIVERY



## I. General

### 1. Validity of the terms

The supplies, services and corresponding quotations of the supplier are solely carried out under the present terms. They are also applicable for future business contacts, even if they are not agreed upon again. The terms are accepted at the latest on receipt of the goods or the service. Counter acceptances of the customer with reference to his terms of purchase will be objected.

### 2. Offers

Working out and submitting offers is, in every respect, not binding and as a rule free of charge. The supplier has legal right of property and copyright on all offers, price lists and drawings; third parties must be neither informed nor given access to any documents, lists or drawings.

### 3. Completion of contract, subsidiary agreements, changes, deviations

Orders are only considered as accepted when we send or fax you a confirmation. Subsidiary agreements and changes must be confirmed by us.

Illustrations and drawings as well as details concerning dimensions, weights, capacities and operating instructions are not binding, if this was not agreed specifically. Otherwise recourse claims in particular due to variances are out of question.

### 4. Prices

Our prices are free and quoted ex works, packaging excluded. Legal V.A.T. has to be added to quoted prices.

## II. Delivery

### 1. Date of delivery and payment

Date of delivery begins with the sending-off of the order confirmation. Observation of the date of delivery requires the customer to fulfill contractual obligations.

Delays of delivery which are not our fault due to strikes, lockouts and faultless rejects of important parts of the delivery do not give the customer the right to get compensation in damages.

The right to rescind the contract presupposes either the impossibility to supply or delay a service for a period of at least 6 months.

If damage is caused against the customer due to a delay that occurs because of the manufacturer's fault, the customer has the right to demand compensation to the total amount of 0.5% but no higher 5% of the value of the part of the total delivery which cannot be used in time or as stipulated in the contract due to the delay as compensation for arrears for each full week of delay.

No fixed-date purchases will be concluded.

### 2. Dispatch

Dispatch is executed on account and risk of the customer. Partial deliveries are allowed.

### 3. Passage of risk

The risk is passed over to the customer as soon as the goods have left our factory - even for exceptional agreed freight-free delivery, installation or mounting. If there is any delay in delivery which is not our fault, for passing over the risk it is sufficient to state that the goods are ready to be dispatched.

## III. Installation

If agreed, the installation comprises the installation of the delivered plants ready for operation. All earthmoving, bricklaying and installation works as well as the provision of scaffolding and hoisting machines (cranes, high-lift trucks etc.) are to be paid for by the customer and have to be completed before the beginning of the installation so that the installation can be carried out without interruption immediately after delivery.

## IV. Payment

Payments have to be made according to the conditions stated in our confirmation of order.

1. If no special agreements have been made, payment has to be made net within 30 days after the date of invoice. Payment of invoices for installation has to be made net immediately after reception of the invoice.

2. No discounts are granted with payments by bill of exchange or prepayments. Bills of exchange are only accepted if this was agreed upon and if they are discountable. The discount is only allowed with written, individual agreement. Acceptances, bills of exchanges, cheques and similar are not valid as performance of engagement.

3. If the payment date has been exceeded, with reservation of the valid rights we will charge you with interest payable arrears of 5% for the period of delay over the prevailing discount rate of the European Central Bank, for general merchants it is 8 %.

4. Payments have to be made only with the allowed legal tenders in the Federal Republic of Germany.

## V. Retention of title

The supplier is granted the following securities until all outstanding payments due to the supplier by the customer for any legal reason whatsoever, now or in the future, have been settled. These securities can be released at the supplier's discretion as long as their value is consistently more than 20 % above the value of the outstanding payments.

The goods shall remain the property of the supplier. Processing or conversion of the goods is always carried out on behalf of the supplier, however without any obligation for him.

If the (co-)ownership of the supplier is terminated through combination of his goods with other goods, it is already agreed now that the customer's share of the (co-)ownership of the combined property in the amount of the proportional value (invoice value) of the customer's goods to the supplier's goods shall be transferred to the supplier. The customer shall store the supplier's share of the goods i.e. the goods which are subject to (co-)ownership of the supplier free of charge. Goods in which the supplier is entitled to (co-)ownership shall be referred to as goods subject to retention of title.

The customer has the right to process the goods subject to retention of title in the normal proper course of business and also to sell them on as long as there are no arrears of payment due to the supplier. Pledging or transfer of ownership by way of security is prohibited. The customer already now assigns all claims (including all outstanding account balances of the current account) arising from the resale of the goods subject to retention of title or from other legal causes (insurance, tortious acts) to the supplier for the sake of security. The supplier grants the customer authorisation, subject to revocation, to call in claims assigned to the supplier in the customer's name and on the customer's account. This authorisation may only be revoked if the customer does not meet his payment commitments to the supplier in a proper manner.

In case of seizure or other claim of the goods subject to retention of title by third parties the customer shall inform the third party in question of the retention of title and shall also inform the supplier without delay, in order that the supplier may assert his rights in this connection.

In so far as the third party is not able to reimburse the associated court or out-of-court costs to the supplier, such costs shall be the responsibility of the customer.

If the customer infringes contractual conditions - particularly if there are arrears of payment - the supplier has the right to take back the goods subject to retention of title or if necessary to transfer the claim for return of the goods to a third party. Pledging or reclamation of the goods subject to retention of title by the supplier does not constitute a cancellation of the contract.

Counterclaims of the buyer may only be balanced when these counterclaims are established in court or are undisputed. The buyer may only exercise a retaining lien if the respective counterclaim is based on the same contract.

## VI. Warranty and correction of faults

1. The quality of our goods is guaranteed for 12 months after passage of risk. If they have any faults and these are announced to us in written form immediately after they are discovered within this delay and they are proved to be due to faulty construction work, inferior construction materials or faulty operations, they are either repaired at our costs and on our choice, or spare parts are supplied. Electric switch parts are, as far as their failure cannot be the cause of the suppliers fault, not included in the warranty.

2. When the rectification of defects or an additional supply fail even after the appropriate giving of a deadline through the customer, the latter may claim a reduction of payment or rescind the contract as he pleases. Further claims are impossible, subject to the cases specifically according to paragraph I.3. of these conditions of warranted qualities.

3. For improper changes or repair works which have been taken up by the customer or third parties without the manufacturer's agreement, the liability for the consequences occurring is cancelled. The same applies if the damage can be led back to the following reasons: unsuitable or improper use, faulty installation or start-up of the customer or third parties, natural wear, careless handling, improper means of production, replacements, faulty construction work, unsuitable construction ground, chemical, electro-chemical or electric influences, as far as they are not the cause of a fault of the supplier.

## VII. Customer's right for withdrawal

Also in the cases under II.1. of the conditions.

## VIII. Supplier's right to rescind the contract, contractual adjustment, Force Majeure

1. In case of unforeseen events, which are not our fault, the contract is brought into line with the customer's agreement if these events change the economic importance or the content of the supply, or have a strong effect on the manufacturer's company and in case it is recognized afterwards that the contract cannot be fulfilled as foreseen. If this is not justifiable in the aspect of economic matters, the manufacturer has the right to partly or fully rescind the contract.

2. The customer's claims for damages as a result of such a rescission are not acceptable.

3. Unfavorable information about the customer's credit worthiness gives us the right to withdraw from the contract or to demand advance payment. The same applies if financial standing is objectively not given and the supplier's payment claim is or will be put at risk. Unsuccessful execution attempts would then justify the supplier's rescission, if his payment claim seems to be seriously put at risk.

## IX. Limitation of liability

Any of the supplier's liabilities are limited to his own fault and that of his executive employees and assistants, provided that the latter neglected fundamental contractual duties.

1. If the delivery item cannot be used by the customer in accordance with the contract due to the fault of the supplier as a result of failure to implement or falsely implementing suggestions and advice which took place before or after conclusion of the contract, or due to the breaching of other secondary contractual obligations, in particular the instructions for the operation and maintenance of the delivery item, the regulations in numbers VI and IX.2 shall apply accordingly, to the exclusion of further claims on the part of the customer.

2. For damages which do not occur to the delivery item itself, the supplier shall be liable, regardless of the legal grounds, only in the case of

- a deliberate action, or
- gross negligence, or
- culpable injury to life, body or health, or
- defects in the delivery item, insofar as he is liable for persons or material damage to privately used items under the product liability law.

In the case of culpable breach of a fundamental contractual obligation, the supplier shall also be liable in the case of simple negligence; in the latter case this shall be limited to reasonably foreseeable damages as per standard contract provisions. This limitation of liability does not apply in the case of injury to life, body or health.

Further claims are excluded.

## X. Applicable law, place of contract fulfillment and place of jurisdiction

The law applicable is that of the Federal Republic of Germany.

The place of fulfillment for both parties is the seller's / entrepreneur's principal place of business as long as neither the fulfillment nor anything else for the seller / entrepreneur as regards supply in the living- or business place has not been agreed upon in written form.

If the customer is in the commercial business, the seller's / entrepreneur's principal place of business is the exclusive place of jurisdiction (Remshalden).

If the customer is not in the commercial business, both parties agree that if the party to be taken to court moves abroad or the residence / principal place of business, or the agreement, is unknown, Remshalden is the exclusive place of jurisdiction.

Status: December 2018

Ness Wärmetechnik GmbH  
Sitz Remshalden  
HRB 281104 AG Stuttgart  
Ust.IdNr.: DE 146618172

Geschäftsführer:  
Dr.-Ing. Andreas J. Ness  
Dipl.-Ing. (FH), Dipl.-Wirt.-Ing. (FH)  
Dietmar B. Ness

Ness Wärmetechnik GmbH  
Remsstraße 24  
73630 Remshalden  
Germany

Telefon +49 (7181) 9675 1  
Telefax +49 (7181) 42612  
E-Mail: [info@ness.de](mailto:info@ness.de)  
[www.ness.de](http://www.ness.de)