

# LOESCHE GMBH – GENERAL CONDITIONS OF SUPPLY AND PAYMENT

## 1. Scope of Application

All our supplies and services for business with legal entities are exclusively governed by the following General Conditions of Supply and Payment unless otherwise agreed upon in each individual case. Any deviating conditions or confirmations of the Customer will be applicable only if, and to the extent that, we have given our express written consent. In particular, our silence to such deviating conditions of the Customer may not be construed as acknowledgement or consent. Such deviating conditions or confirmations of the Customer are hereby expressly objected to.

## 2. Contract Conclusion and Effectiveness

2.1 Our offers, including those based upon our own planning work, are subject to change without notice. An order is deemed to be accepted only if we have acknowledged acceptance in writing.

2.2 Any side agreements and all other arrangements will be effective only if expressly confirmed by us in writing.

## 3. INCOTERMS

Unless explicitly agreed otherwise, our deliveries are effected EXW/ex works (works of the producer) in accordance with INCOTERMS® 2010.

## 4. Prices

4.1 Our quoted prices are net prices. Statutory Value Added Tax, if any, will be in addition.

4.2 The offer prices are fixed prices. If, after contract effectiveness, freight costs, insurance costs or official levies and charges (e.g. customs, import and export duties) are newly introduced or raised, then such additional charges will be to the agreed price. Any increase in material acquisition costs, wages and ancillary wage costs, or energy costs, may be taken into account in the prices providing a period of at least 18 months has elapsed between the coming into effect of the contract and the delivery.

## 5. Terms of Payment

5.1 30% advance payment upon contract effectiveness, 70% pro rata delivery out of an irrevocable and confirmed Letter of Credit to be opened upon contract effectiveness, unless agreed otherwise in individual cases.

5.2 We will be under no obligation to effect delivery or further deliveries before any outstanding invoiced amounts have been settled. If any payment is delayed, we reserve the right to automatically adjust delivery terms and rendering of contractual services according to the time of delay of the payment affected.

5.3 The day of payment will be considered to be the day of our receipt of the amount due or of the credit entry on our account. Further claims for due and default interests in the legal amount as well as for damages because of late payment will remain unaffected.

5.4 If any of the terms of payment have not been observed or if we learn of circumstances which, in our reasonable business judgment, give rise to justified doubts regarding the Customer's creditworthiness, including any facts already existing upon formation of the contract but not known to us at that time, we will be entitled in such cases, notwithstanding any further legal claims, to require prepayment or a reasonable security before making any further supplies or deliveries than still outstanding. After having set a reasonable respite period for providing any such securities, we may withdraw from the contract or claim for damages because of non-performance.

5.5 The Customer may exercise a right of retention or set-off only with respect to such counter-claims which have not been disputed or finally adjudged. We will be entitled to declare a set-off even if the mutual claims to be set off arose in different currencies. In such case the medium exchange rate as officially fixed on the Currency Exchange in Frankfurt on the day of set-off will be deemed applicable for conversion.

## 6. Taxes and Charges

Any and all taxes, customs duties, charges and levies imposed outside the Federal Republic of Germany in relation to the execution of our supplies and services are to be borne by the Customer.

## 7. Scope of Supplies and Services

7.1 The scope of our supplies and services has to comply with the offer and order confirmation. Any reference to standards, similar technical rules, other technical specifications, descriptions and illustrations of supplies and services and/or parts thereof in offers and sale literature shall be considered as description only and not express warranty of certain characteristics of the delivery item. Certain characteristics of the equipment and performance parameters are, in principle, only be deemed expressly warranted by us if expressly confirmed in writing.

7.2 Our services do not comprise any further works or civil works which are to be taken by the Customer, in particular delivery of parts or materials, or the provision of services which have not been expressly specified in our offer.

7.3 Any modification of, or deviation from, our scope of services required by the Customer needs our prior written consent. Any such modification or deviation, including those arising out of or in connection with official licenses and permits will be taken into consideration and continuously documented in corresponding supplements. Any additional expenses associated therewith will be charged separately to the Customer.

7.4 Our technical and documentary execution of services shall be in conformity with DIN, VDE, UVV as well as our own standards on the basis of the metric system.

## 8. Time and Delivery

8.1 Delivery dates and periods shall be agreed upon expressly and in writing in order to be binding. In case of any delivery dates and periods which are subject to change or only approximate indications (e.g. app., about, etc.), we shall use our best effort to comply with them.

8.2 Delivery periods will start upon receipt of the down payment and opening of the Letter of Credit in compliance with the agreed terms of payment, but in any case not before all details of the order execution have been clarified and all other prerequisites to be fulfilled by the Customer have been complied with.

8.3 In case of any modification of, or deviation from, the scope of services (clause 7.3), new delivery periods shall be fixed.

8.4 Any claims for damages because of default or non-performance - irrespective of the reason thereof - may be asserted in accordance with the provisions set out in clause 12 only.

8.5 We will not be in default as long as the Customer is in default with the performance of any of his obligations towards us, including obligations arising out of any other contracts.

8.6 In case of non-delivery, incorrect or delayed delivery or non-performance, incorrect or delayed performance of any services by our suppliers for reasons beyond our responsibility or in any event of force majeure, we will be entitled to delay the delivery for the period of such obstruction or withdraw from the contract, either in whole or in part, with respect to the part yet outstanding. Strikes, lock-outs, administrative orders and actions, shortage of energy and raw material, shortage of transport capacity, business obstacles beyond our responsibility, e.g. by fire, flood, destruction of machinery, and any other obstacles that, from an objective point of view, have not been caused by our fault, shall also be considered as force majeure. The above provisions will also apply if any circumstances mentioned therein should arise after us having been in delay. The costs caused by the delay have to be borne by the Customer.

8.7 If a binding delivery date or period has been agreed upon and because of an event as described in clause 8.6 above such delivery date or period is exceeded, the Customer may require us to declare, within a period of two weeks, whether we want to withdraw from the contract or effect delivery within a reasonable respite period. If we do not make a declaration, the Customer will be entitled to withdraw from the part of the contract yet outstanding.

## 9. Dispatch

9.1 Any parts reported ready and due for pickup have to be picked up by the Customer instantly. If parts ready for pickup are not picked up instantly, we are entitled at our discretion either to dispatch the parts or stock them at Customer's risk and expense.

9.2 If the Customer fails to pick up supplies in time, we will be entitled to obtain prompt payment of the price after expiry of a 14 days' respite. After expiry of the respite period, we may also withdraw from the still outstanding part of the contract, or refuse performance, and claim damages.

9.3 After reception of the supply the Customer is obliged to check it for external damages and completeness without delay. If the Customer fails to do so, the supply shall be considered to have been fulfilled according to the contract.

## 10. Acceptance

10.1 The supply shall be considered as accepted if the tests as stipulated in the technical specifications are completed successfully, but at the latest, if the Customer starts to commercially use parts of the supply or the complete supply. In case the tests cannot be conducted for reasons not solely attributable to us, acceptance shall be deemed achieved six months after delivery at the latest.

10.2 The acceptance shall be confirmed in writing. It shall not unreasonably be refused. Amongst others, refusal shall be considered as unreasonable if the functionality of the plant or its parts is only marginally impaired.

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## 11. Warranty

- 11.1 In the event of any defects, we are obliged to either repair the defect or deliver non-defective parts (re-performance), at our own option, according to the agreed INCOTERMS® 2010 free of charge to the Customer, provided the defect or missing characteristic was verifiably caused prior to passing of risk, so that the usability of the part in question is substantially impaired. We shall be entitled to refuse re-performance pursuant to the statutory provisions.
- 11.2 Detection of defects have immediately to be notified to us in writing by specifying the damage occurred in detail.
- 11.3 Spare parts will remain our property upon exchange.
- 11.4 The Customer has to give us the time and opportunity required for the detection of the defect and the necessary remedial action.
- 11.5 If we do not comply with the obligation according to clause 11.1, the Customer may, at his option, either withdraw from the contract, or reduce the purchase price, after he has set a reasonable respite period to us which has expired, unless such respite period is legally unnecessary. The same applies if at least two attempts of repair have failed and further attempts are reasonably unacceptable to the Customer, or if any repair and replacement delivery are impossible. In case of a withdrawal from the contract the Customer will be liable for deterioration, destruction and untaken utilization not only for his own reasonable diligence, but for any negligence.
- 11.6 Any other claims for damages or reimbursement of expenses of the Customer because of, or in connection with, defects or consequential damages based on defects, irrespective of their legal basis, will exist in accordance with the provisions laid down in clause 12 only. Also in this case, we will, however, be liable for the typical and foreseeable damage only.
- 11.7 In case of non-contractually supplied equipment, the Customer will only be entitled to rescission of the contract or replacement delivery if claims for compensation against us are excluded or if any utilization of such supply and the claiming for compensation of the remaining damage is unreasonable for the Customer. In such cases, we are at first entitled to rectify such defect. If such rectification of the defect concerned is not successful and/or causes an unreasonable delay, the Customer will, at his own discretion, be entitled to declare rescission of the contract or request replacement delivery. The Customer will also be entitled as to the same effect, if the rectification of the defect causes an unreasonable inconvenience or if uncertainty regarding reimbursement of any expenses of the Customer exists.
- 11.8 Any warranty claims against us become barred after expiry of 12 months after notice to the Customer of readiness for pickup. For replaced parts or rectifications the before mentioned expiry term will apply accordingly after replacement or completion of the second attempt to rectify as per clause 11.5.
- 11.9 In the event of an unjustified complaint by the Customer, we will be entitled to invoice the Customer for the expenses incurred on the basis of the hours spent plus travel expenses.
- 11.10 In case we request additional material and/or working hours during warranty actions, we will be obliged to acknowledge such request by filing in respective receipts or by signing respective time sheets setting out the work performed. Material receipts or time sheets not countersigned by us will not be compensated by us.
- 11.11 In case of fraudulent concealment of a defect any claims of the Customer will exclusively be subject to the statutory provisions.

## 12. Limitation of Liability

- 12.1 For any claims for damages directed against us and based upon breach of duty on the grounds of negligence, irrespective of the legal basis, we may be held liable in case of slight negligence only if major contractual duties are violated and, thus, the purpose of the contract is endangered. Otherwise, our liability for slight negligence is excluded.
- 12.2 In the event of liability under clause 12.1 hereof and strict liability, we will be liable for the typical and foreseeable damage only. Claims for vain expenses by the Customer are excluded.
- 12.3 Our total cumulative liability towards the Customer in respect of any and all claims which may arise under the Contract in tort or otherwise, including, but not limited to, claims for liquidated damages, third party claims for property damage or patent infringement, warranty and guarantee claims and including environmental liabilities and damages, shall in no event exceed 10% of the purchase price. For delay damages we will be liable only up to 5% of the net price of the machine delivered.
- 12.4 The exclusion of liability under clauses 12.1 to 12.3 applies also to the same extent with respect to our management, legal representatives, executives and non-executives, employees and other agents.

- 12.5 The provisions laid down in clauses 12.1 to 12.4 are not be applicable if we are held liable under the Product Liability Act, if we are liable for the injury of life, body or health, or in case of fraudulent concealment of a defect.

- 12.6 Our liability is always excluded if the Customer continues operation of the plant despite our written instruction to stop or reduce the operation of the plant until the defect has been remedied.

- 12.7 All claims for damages and reimbursement of expenses against us become barred 12 months following the notice to the Customer of readiness for pickup of the equipment, in the case of tort after getting knowledge or gross negligent ignorance of the circumstances which justify the claim or of the person liable. This does not apply to in case of willful intent and in cases pursuant of clause 12.5.

## 13. Retention of Title

- 13.1 We will retain title to all equipment and parts supplied by us until all our claims out of the business relationship with the Customer have been duly settled. Title will not be transferred in case of combination, mixing or processing operation of materials. In case a separation is impossible, the partial title to the equipment concerned will remain with us.
- 13.2 The Customer has to insure the equipment and parts which are under reservation of proprietary rights sufficiently, in particular against fire and theft and has to label them as to the extent our ownership is retained as such. Any claims against the insurance company regarding the equipment and parts which are under reservation of proprietary rights hereby are already assigned to us in the amount of the value of the equipment under retention of title.
- 13.3 Any pledging, granting of equitable lien or other dispositions with regard to the equipment and parts under retention of title is not permitted. The Customer has to promptly notify us of any seizure or other action by a third party taken with regard to the equipment or parts under retention of title, the opening of insolvency proceedings with regard to his property of any other legally relevant events which might affect our rights.

- 13.4 Should the value of the securities established in our favour by virtue of the foregoing provisions exceed our aggregate secured claims by more than 20%, we shall, upon Customer's request, release securities of our own choice to the extent of such excess.

## 14. Applicable Law

Unless explicitly agreed otherwise, all legal relations between the Customer and us are exclusively governed by the laws of the Federal Republic of Germany. The United Nations Convention on International Sale of Goods (CISG) does not apply.

## 15. Change of Contract, Rescission

Changes to or rescission of contract must be in written form. This also applies to agreements regarding revocation of this present requirement for written form.

## 16. Place of Performance and Venue

- 16.1 Place of performance for all contractual obligations is the place of delivery EXW (works of producer). The competent courts in Düsseldorf will have exclusive jurisdiction for all disputes if the law does not compulsorily provide otherwise. We will, however, also be entitled to sue the Customer at his general venue.
- 16.2 In case of dispute, the German version of these General Conditions of Supply and Payment will prevail. The English version is serving for information only.

## 17. Severability

Should individual provisions of contract be or become invalid, the remaining provisions will continue to be in full force and effect. The invalid provision shall automatically be replaced by such other provision coming as close as possible – to the legally permissible extent – to the economic meaning and purpose of the invalid provision.

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D-40549 DÜSSELDORF · HANSAALLEE 243  
TEL. +49-211-5353-0 · FAX +49-211-5353-500  
loesche@loesche.de · www.loesche.com



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