

General Terms of Trade

PINK GmbH Vakuumtechnik and PINK GmbH Thermosysteme

12/2005

1. General Information

- 1.1 Any contract shall be subject to these general terms of trade. Any terms and conditions providing otherwise will not be incorporated into such contract.
- 1.2 Changes and amendments to these terms and to this clause require the written form. Any collateral agreements made prior to or on entering into a contract may be referred to only if these are confirmed in writing immediately. Any statement made by one of our employees will only be binding if confirmed by us in writing.
- 1.3 We shall be entitled to store any data required for performing under the contract in electronic form.

2. Set-offs, retention, and assignments

Customer shall be entitled to set-offs or retentions only in case of non-appealable or uncontested claims. We shall be entitled to assign rights or obligations under a contract to third parties, in full or in part.

3. Shipping costs, transfer of risk

- 3.1 Customer shall bear the transport, insurance, and packing costs and be responsible for the disposal of packing material.
- 3.2 Risk shall pass to the customer when the goods to be shipped leave our site, even if we are to bear the shipping, export, or mounting/installation costs, or if the customer is in default in acceptance.

4. Lead times, default, damage caused by delay

- 4.1 Lead times refer to the time the goods are dispatched. The lead time periods will begin only after all technical issues have been clarified that required clarification upon entering into a contract, after receipt of all documents to be supplied by the customer, such as drawings or permits, or after receipt of due down-payments and release for production.
- 4.2 Acts of God, force majeure, and strikes, lock-outs, shut-downs, difficulties in supply or delayed or defaulted supply through sub-suppliers for which we are not responsible will extend the lead times by the period of such cause for delay. The same applies for additional or changes to the deliverables on the customer's request.
- 4.3 A prerequisite for a default in delivery on our part will in any case be a note by the customer fixing a reasonable final deadline.
- 4.4 With respect to the consequences of such a default, our liability shall be limited to any reasonably foreseeable damage at the time of entering into the contract, however the amount must not exceed 10% of the goods' and deliverables' value. This limitation does not apply in case of wrongful intent, gross negligence or in case of damage to life, limb or health. The customer must inform us immediately of any imminent consequences resulting from default in written form.
- 4.5 The provisions of this paragraph shall apply for the agreed mounting or installation periods accordingly. The mounting or installation periods will start only after all and any preparatory works have been completed.

5. Prices, payment terms, security

- 5.1 Our prices are to be understood ex works plus statutory VAT and exclusive of packaging. If the period between entering into the contract and delivery exceeds 6 months, pursuant to Sec. 315 BGB (German Civil Code, in the following referred to as "BGB") we are entitled to a reasonable extra charge to cover our increase in costs during this period.
- 5.2 If a lump sum was not agreed for mounting or installation work, we will bill them at the then applicable field service rates. Lump sums for mounting and installation cover agreed works only. Any additional works or waiting times will be billed at our field service rates.
- 5.3 If not agreed otherwise in writing, invoices are due and payable in Euros immediately. Notes and checks will be accepted on account of performance and at the customer's expense only.
- 5.4 In case of a default in payment or reasonable doubt as regards the customer's credit-worthiness, we can make any shipment subject to payment in advance of the full invoice amount.

6. Agreed Mounting or Installation

If mounting or installation has been agreed, the customer shall make available the following in time and at its expense: Helpers and skilled workers, sufficient in number and qualification, lighting, power, compressed air, water, welding power, etc., heating, necessary connections, necessary fixtures and equipment (for example lifting gear, welding equipment), a lockable room for storing material, tools and clothing for the mounting period, and suitable sanitary facilities.

7. Retention of title, assignment of future claims

- 7.1 The goods and deliverables will remain our property until payment is received unconditionally and in full. If there are other accounts receivable with such customer, the retention of title will remain in force until these are settled as well.
- 7.2 Goods and deliverables under retention of title can only be resold by the customer – in the ordinary course of business – if the customer has not assigned, pledged or otherwise charged its claims under such transaction.
- 7.3 The customer must not connect goods or deliverables under retention of title with other things that are subject to third party rights. If, despite of this, goods or deliverables under retention of title are incorporated into a new (joint) product, we will acquire direct proportionate ownership in this product even if it is to be considered the main product. Our ownership interest in percent shall equal the ratio of the billed value of the goods and deliverables under retention of title and the joint product's value at the time of joining.
- 7.4 Any connection of goods or deliverables with a piece of property shall be on a temporary basis only (Sec. 95 BGB) until paid for in full. The customer shall keep our coownership share in custody, free of charge.
- 7.5 The customer hereby assigns any future claims towards any buyers of goods and deliverables under retention of title (item 7.2) or newly formed objects (items 7.3 and 7.4), in the amount of our invoice for such goods and deliverables for the purpose of providing security. As long as the customer is not in default with respect to payment for goods or deliverables under retention of title, it may collect assigned claims in the ordinary course of business. However, the proportionate proceeds must be used for paying us for such goods and deliverables to us.
- 7.6 On the customer's request, we shall release any security if and to the extent that the nominal value of such securities exceeds 120% of the nominal value of the accounts receivable from this customer, whereas we will determine the security to be released.

7.7 In an event of default we shall be entitled to cancel the contract, to claim recovery of possession of the goods and deliverables under retention of title from the customer and to collect any assigned claims. To ascertain our rights, we shall be entitled to have a person under a professional confidentiality obligation inspect the customer's documents or books concerning the relevant goods and deliverables.

8. Defects in quality, exclusion of liability

- 8.1 We guarantee that the goods and deliverables supplied by us, including agreed mounting and installation works, are free of defects at transfer of risk. The goods' or deliverables' required nature, service life or use is exclusively subject to the specifications agreed in writing, the product description or the manual. Any requirements beyond that, including but not limited to statements during negotiations, in advertising or references to industry standards, will become part of the contract only if specifically incorporated in written form.
- 8.2 In case the customer prescribes the use of specific materials or designs, we shall not be liable for such materials' or designs' suitability or permissibility and we shall not be required to carry out any tests in this regard.
- 8.3 As a rule our liability for defects shall be limited to supplementary performance. Supplementary performance shall, in our own discretion, either be the correction of defects or the delivery of goods or deliverables free of defects. Further warranty claims will arise only if supplementary performance is denied, impossible, or if it fails.
- 8.4 If, in the course of examining or rectifying a defect that was notified by a customer, it turns out that the complaint was unjustified we shall be entitled to demand compensation for examination or repair costs in the amount of our applicable field service rates. Title to taken back, removed or replaced parts will be transferred to us.
- 8.5 The customer must carefully examine delivered goods immediately upon receipt – also with respect to a product's safety – and to notify us about any obvious defects immediately in writing, latent defects must be notified to us immediately after becoming aware of them. The customer must report any transport damage to the deliverer immediately. If this requirement to examine and give notice of defects is not fulfilled, the customer will forfeit any warranty claims.
- 8.6 We shall not be liable for any consequences of improper handling, use, maintenance, or operation of the delivered goods or deliverables through the customer or its employees or aiders, and for normal wear and tear. If the customer intends to use the delivered goods or deliverables for other purposes than the agreed ones, it will be in the customer's sole responsibility to check their suitability or permissibility thoroughly. We shall not be liable for any usability that was not expressly confirmed in writing. This applies especially with respect to consequences of chemical, electrochemical, electric, or thermal influences and violations of our instructions for use. Further, we shall not be liable for any damage or defects through mounting or installation work that is not connected with the work contracted to us or the mounting or installation of objects that have not been supplied by us. The same applies if defects are due to interventions or instructions of the customer that have not been confirmed by us.
- 8.7 We shall be liable for compensating property damage or pecuniary losses only in case of intent or gross negligence. As regards property damage or pecuniary losses with respect to other things than the delivered goods or deliverables our liability shall be limited to reasonably foreseeable damage at the time of entering into the contract. This does not affect liability pursuant to the product liability law regarding damage to life, body or health or for culpable violations of material contract obligations.
- 8.8 Warranty claims will become time barred upon the lapse of one year from acceptance of delivered goods or deliverables. The same applies for claims from violations of secondary obligations or for compensation of property damage or pecuniary losses to things other than the delivered goods or deliverables. This limitation does not apply for liability for malicious non-disclosure of a defect, for liability pursuant to the product liability law, for liability for damage to life, body, or health, or for liability for intent or gross negligence.

9. Legal imperfections in title

- 9.1 Our liability shall be limited to the warranty that the delivered goods are not subject to third party industrial property rights or copyrights in the country of delivery. In case of a legal imperfection in title we shall obtain an appropriate right of use or replace the delivered goods, in our own discretion, within the period stated in item 8.8 above.
- 9.2 Any liability for imperfections in title shall be excluded if a violation of property rights is in the responsibility of the customer, due to changes to the delivered goods, due to use that could not be foreseen by us or otherwise, if the customer fails to inform us immediately in writing about any claims asserted by a third party, if the customer acknowledges a violation towards such third party or if the customer, in case of discontinued use, fails to point out that such discontinued use does not represent an acknowledgement of any violation of property rights.

10. Industrial property rights, secrecy

- 10.1 We reserve title to all and any industrial property rights and copyrights for our designs, samples, images, technical documentation, cost estimates, or quotations, even if the customer has borne the costs for such designs etc. The customer may use the designs etc. only in the way that was agreed with us. Delivered goods may not be produced by the customer itself or by third parties without our prior written consent.
- 10.2 To the extent we deliver goods in designs prescribed by the customer, the customer shall be liable for warranting that their production or delivery will not violate any industrial property rights or other third party rights. The customer shall be responsible for compensating us for any damage resulting from such violations of rights.
- 10.3 The customer shall keep secret all and any non-public information and knowledge gained in the business relationship with our company.

11. Spare parts

To the extent that there is an obligation for the supply of spare parts, such obligation shall be limited to a period of five years from receiving the delivered goods.

12. Place of performance, place of jurisdiction, choice of law

Place of performance shall be our registered place of business in Wertheim. Place of jurisdiction, in our own discretion, shall be Wertheim/Mosbach or the competent court for the customer's registered place of business. The German law applies, excluding the UN law on sales (CISG).

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