

General Terms and Conditions of Sale

I. General

1. The following General Terms and Conditions of Sale of

TALIS Management Holding GmbH
ERHARD GmbH & Co. KG,
Ludwig FRISCHHUT GmbH & Co. KG,
SCHMIEDING Armaturen GmbH,
STRATE Technologie für Abwasser GmbH,

[jointly or each „Supplier“) shall apply exclusively.

2. These General Terms and Conditions shall only apply in relation to a person or entity which acts as an entrepreneur in the meaning of § 14 of the German Civil Code (BGB) as well as in relation to legal entities under public law and special funds under public law in the meaning of § 310 par. 1 BGB (“Customer”).

3. Terms of the Customer, which deviate from or are in contradiction to these General Sales Terms and Conditions, are not accepted by Supplier, unless Supplier provides its explicit consent in writing.

4. Agreements between Supplier and the Customer are valid only if made in writing. Agreements, amend-ments or addenda to agreements, as well as individual agreements, shall be read and construed as fixed in writing or as confirmed in writing by Supplier.

II. Offers, quotations and related documents

1. Offers by Supplier shall not be binding.

2. Supplier reserves any and all property and intellectual property rights in pictures, drawings, calculations and further documents. Such documents may not be handed over to third parties.

III. Products, modifications

1. The quality of the products which Supplier manufactures or supplies (Products) shall be exclusively as set out in the current specifications of Supplier. Measures and tolerances are subject to respective DIN EN standards as amended from time to time, otherwise to use in the business and the state of the art.

2. Supplier may at any time make changes to its performance or the Products as far as such changes:

are required to comply with applicable safety or other statutory or regulatory requirements; and do not materially affect their quality or performance, and are not unreasonable for the Customer.

IV. Price and conditions of payment

1. Unless agreed differently, the prices of Supplier shall be Ex Works Supplier (INCOTERMS 2010). Expenses for packaging shall be charged separately.

2. VAT is not included in the prices of Supplier. It shall be charged separately and at the respective statutory rate. VAT shall be separately stated in each invoice.

3. If more than four months pass between conclusion of the Agreement and delivery, Supplier shall be entitled to increase prices in line with development of market and cost of production.

4. Payments are due upon receipt of the invoice. The Customer shall get in delay of payment even without a reminder if payment is not made within 14 days of the date of the invoice. Payment shall not be deemed made until Supplier has received clear funds or been credited the amount due.

5. Interest for delay in payment as provided by statutory law shall be charged on top of the original purchase price if the Customer gets in delay of payment, without prejudice to Supplier’s other rights under the contract. In particular, Supplier reserves the right to claim additional damages.

6. If Customer and Supplier have agreed payment in installments and Customer does not pay in time at least two consecutive installments, Supplier shall, after a reminder and setting a reasonable grace period, be entitled to immediate payment of all sums.

7. If Supplier and Customer have agreed payment via SEPA (Single Euro Payments Area) Direct Debit Mandate, this payment method will be based on the grant of a SEPA Man-date in written form. AI-ready existing collecting authorizations will be re-interpreted as SEPA direct debit authorizations man-date. The Pre-Notification period will be reduced to 1 day. The Supplier will inform the Customer about the exact date of collection by Pre-Notification. The Customer guarantees to have enough funds on bank. Costs caused by non-redemption or charge re-versal of the direct debit authorization have to be borne by the Customer, provided that the non-redemption or charge re-versal was not caused by the Supplier.

8. Minimum order value shall be € 150 net. Supplier shall be entitled to charge a handling surcharge of twentyfive Euro (€ 25) for orders with a lower value.

V. Time of delivery and delay

1. Delivery times or dates stated by Supplier shall not be binding unless Supplier confirms them explicitly as binding in writing. Delivery shall not be due until Customer has resolved all technical issues related to delivery.

2. Compliance with delivery times or dates shall be subject to correct and timely supply to Supplier, if Supplier has concluded an equivalent hedging transaction. Supplier shall inform Customer of any imminent or likely delay without undue delay.

3. If Supplier is in delay of delivery, it shall owe liquidated damages for delay of 0.5 per cent of the value of the delivery or partial delivery (Section IV 1 and 2) concerned for each full week of delay only. Damages under the preceding sentence shall be capped at 5 per cent of such value, without prejudice to Section XI below.

4. If delay in delivery is caused by force majeure, lawful strikes or lock-outs or other events on which Supplier has no influence, time for delivery shall be extended correspondingly. Supplier shall inform Customer on occurrence or cessation of such circumstances as soon as possible.

5. Even if Supplier is in delay, Section XI below shall continue to apply. § 287 BGB shall not apply.

VI. Transfer of risk, approval

1. The risk of loss and damage shall pass to Customer Ex Works Supplier (INCOTERMS 2010). As far as delivery is subject to approval by Customer, risk shall pass upon such approval. Approval shall be subject to par. 2 – 6 below.

2. Supplier shall notify Customer that the work is ready for approval.

3. The Parties shall fix approval in a minute signed by both Parties. Approval may not be withheld or refused for immaterial defects only. Defects shall be

remedied as a matter of warranty and be set forth in the minute.

4. If Customer is entitled to refuse approval because of defects and makes use thereof, Supplier shall remedy such defects without undue delay and provides delivery for approval again.

5. If Customer is in delay of approval, Supplier may set a reasonable grace period pointing to the consequence under the following sentence. Upon expiry of such grace period, delivery shall be deemed approved.

6. If Customer starts using objects on which Supplier has performed installation or other works, for purposes other than testing, such works shall be deemed approved.

7. Supplier is entitled to partial delivery, to the extent such partial delivery is reasonable for the Customer.

VII. Retention of title

1. Supplier shall retain title to all products until it has received in full all sums due from the Customer under the relevant contract together with all other sums which are or which become due to Supplier from the Customer on any account.

2. If the Parties have agreed current accounts, retention of title shall secure the balance to the favour of Supplier.

3. Any processing or alteration of Products under retention of title (Products under Retention) by the Customer is conducted on behalf of Supplier in the meaning of § 950 BGB. If the Products under Retention are processed in combination with other goods to which Supplier has no title, Supplier shall acquire joint property of the finished product or any other product in a proportion equal to the value of the Products under Retention of Supplier compared to the value of other products used. If Products under Retention are amalgamated or combined with other objects and title of Supplier thereby ends, the Parties agree right now that property or joint property rights of Customer to objects amalgamated or combined shall be transferred to Supplier in the value invoiced for the Products under Retention. With regard to such products, the same applies as to Products under Retention.

4. The Customer shall be entitled to resell the Products under Retention in course of ordinary business only and only as long as it is not in delay of payment.

5. The Customer assigns all claims against its own customers from the resale of Products under Retention to Supplier right now. Supplier accepts such assignment. Supplier, upon request of Customer, shall release collaterals including Products under Retention, rights in Customer’s products or claims to the extent their value, as can be collected by Supplier, exceeds the value of receivables secured by more than 10 %.

6. Supplier shall not collect claims assigned under par. 5 above as long as the Customer makes payments in time, does not get into delay of payment, does not file a motion for insolvency and does not suspend payments.

7. If Customer gets in delay of payment, files a motion for insolvency or suspends payments, Customer shall disclose the assigned claims and its debtors to Supplier, to deliver all and any information necessary to collect the claims, to hand over related documents and to disclose assignment to its debtors.

8. If a third party seizes the Products under Retention or interferes with Supplier’s property in any other way, the Customer shall inform Supplier without undue delay so Supplier can use remedies to protect its property rights, in particular under § 771 of the German Code of Civil Procedure (ZPO), or equivalent other remedies. As far as the third party is not able to reimburse the court fees and out of court costs for such remedies to Supplier, the Customer is liable to Supplier for the unpaid costs.

9. If Customer files a motion for insolvency, Supplier may rescind the agreement and recover Products under Retention immediately, without prejudice to § 323 BGB.

VIII. Defects and warranty

1. Warranty rights of Customer (“Gewährleistungsrechte“) are subject to Customer’s full compliance with its obligations for examination and notice of defects under Section 377 of the German Commercial Code (HGB). Customer shall notify Supplier of apparent defects in writing without undue delay, but in any case within seven days after delivery. Non-apparent defects shall be notified in writing without undue delay after such defects have been detected.

2. Supplier shall not accept any warranty but that goods comply with the specifications as provided under Section III par. 1 above. Supplier namely does not warrant fitness for a particular use or purpose or merchantability of goods.

3. At the discretion of Supplier, Supplier shall repair defective goods or deliver new Products without defects, provided that Customer has paid an appropriate portion of the purchase price, taking into account the defect. The Customer shall support Supplier in finding and remedying defects. Additionally, the Customer shall grant access to any documentation which could give more details about the defect. Supplier may refuse rectification to the extent that such rectification is only possible at disproportional cost.

4. If Supplier is not willing or unable to rectify the defect, especially if rectification is delayed inappropriately for reasons for which Supplier is responsible, or if the rectification fails, the Customer shall be entitled to rescind the contract or to reduce the price as provided by statutory law. A failure to rectify the defect may only be assumed after two attempts to rectify have failed.

5. Customer shall, upon agreement with Supplier, grant Supplier the time and opportunity for repair or replacement deliveries as Supplier considers necessary. Otherwise, Supplier shall be released from any liability for consequences resulting from such failure.

6. Other rights of Customer shall be subject to Section XI below.

IX. Warranty for third party rights

1. If use of the Products infringes third party intellectual property rights or copyrights (IPR) in Germany, Supplier shall procure Customer at Supplier’s cost a right to further use the Products or modify the Product in a reasonable way so it does not infringe IPR any more.

2. If this is not possible at reasonable expense or within a reasonable period of time, Customer may rescind the agreement or reduce the price. In such a case, Supplier may rescind the agreement, too.

3. In addition, Supplier shall indemnify and hold harmless the Customer against claims of third parties in view of their IPR to the extent such claims have been awarded by a judgment that can no longer be appealed, or have not been disputed.

4. Without prejudice to Section XI below, the obligations of Supplier under this Section IX are the exclusive rights for violation of third party IPR. They are subject to

- The Customer giving notice that a third party asserts infringements of its IPR without undue delay,
- The Customer supporting Supplier to a reasonable extent in defending against such infringement claims or allowing Supplier to modify the Products as provided in par. 1 above.
- The Customer leaving to Supplier any defence, including but not limited to settlement out-of-court,

- The infringement to IPR not being due to instructions or requirements of Customer and

- The infringement to IPR not being caused by modifications to the Product by Customer or by use of the Products in a way not admissible under the agreement.

X. Return of Products

1. Return of Products against credit note shall be subject to prior written consent of Supplier. Returns of a value below € 250 according to the price list shall usually not give rise to a credit note. There will likewise be no credit note for gate valves or fittings which are no longer part of the assortment, customized accessories, gate valves or fittings as well as for returns made more than 12 months after delivery to the Customer. If Customer returns gate valves or fittings which are as good as new and in stock carriage paid, the credit note shall be up to 60 % of the amount invoiced, if these products are returned within six months of the delivery to Customer. In addition, Supplier may charge to Customer or deduct from such net invoice amount all costs incurred because of return, including but not limited to carriage and handling costs, cash discounts allowed and cost of reconditioning.

2. Customized Products may in no case be returned.

XI. Liability

1. Supplier shall have unlimited liability for intentional and grossly negligent acts.

2. In case of simple negligence, Supplier shall be liable only as far as an obligation is violated whose performance is essential for performing the contract and on whose performance the Customer may regularly rely. In such cases, Supplier’s liability is limited to damages which are typical for such contract and foreseeable for Supplier.

3. Limitations or exclusions of liability according to this Section XI shall not apply to claims based on the German Product Liability Act and to damages of life, body or health.

4. As far as Supplier’s liability is excluded or limited, such an exclusion or limitation shall apply mutatis mutandis to the personal liability of its employees, representatives and vicarious agents.

5. Claims of the Customer with regard to implied warranties (Sections VIII and IX) shall be subject to a limitation period of one year beginning by the transfer of risk (Section VII). For Products which have been, in line with their customary use, used for a building and have caused defectiveness of such building, the limitation period shall be five years. Sentences 1 and 2 shall not apply to claims based on intentional or grossly negligent acts, to claims for damage to life, body or health, or to claims based on the German Product Liability Act.

6. Customer shall indemnify and hold harmless Supplier, its employees, representatives and vicarious agents upon first demand against any liability towards third parties which arises from any intentional or negligent breach of contract by Customer. Customer shall reimburse Supplier and the aforementioned persons all necessary and reasonable costs of defense.

XII. Use of software

To the extent the Products comprise software, Supplier shall grant Customer a non-exclusive right to use the software including its documentation. It shall be supplied for use on the Product it is intended for. It may be used on one system only. Customer may copy, re-engineer, translate or transfer software from object code to source code only to the extent allowed by statutory (§§ 69 a ss. of the Act on Copyrights, „Urheberrechtsgesetz“, UrhG) only. Customer shall not remove or alter statements on manufacturer, namely on copyrights without Supplier’s prior written consent. Any other rights concerning the software and documentation including all copies shall be reserved by Supplier or the software supplier.

XIII. Miscellaneous, applicable law, forum

1. The Customer shall not assign its claims against Supplier under this Agreement. This shall not apply as far as § 354a of the German Commercial Code (“Handelsgesetzbuch“, HGB) is applicable.

2. The Customer shall be entitled to set-off only to the extent its counterclaim is undisputed or has been awarded by a judgement that can no longer be appealed.

3. The same shall apply to rights of retention or to refuse performance under § 320 or § 273 BGB. Customer shall have such rights only with respect to counterclaims that result from the same contract. In case of an ongoing business relationship, each single order shall be considered as a separate contract.

4. If any clause of these General Terms and Conditions is unenforceable, this shall not affect the validity of any other clause.

5. German law shall apply exclusively. The application of the UN CISG shall be excluded.

6. Exclusive court of venue shall be the place of business of Supplier. Supplier may, however, file suit at any court which has jurisdiction for Customer.

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