

GENERAL TERMS AND CONDITIONS OF SALE

CALORIC Anlagenbau GmbH
Lohenstrasse 12, D-82166 Gräfelfing near Munich, Germany

1. Scope of Application

1.1 The following terms and conditions ("General Conditions") shall apply with respect to all selling contracts („Contract“) with our customers outside of Germany, Austria, Liechtenstein and Switzerland, and, regardless of specific notification in a particular case, also for all future businesses. They shall apply

- also for future businesses with a customer to the extent such businesses are of a similar character, as well as
- in cases where we, even when having knowledge of terms and conditions of the customer that are opposing to or deviating from these General Conditions, including any tendering guide lines, should perform any delivery without any reservation.

1.2 These General Conditions shall apply for use in businesses with natural persons or legal entities, which, when entering into this Contract, act in exercising their professional activity;

1.3 Any deviating terms and conditions of the customer shall not be accepted, unless otherwise expressly agreed by us in writing.

1.4 Any reference to delivery terms (such as EXW, FOB) shall mean the corresponding terms of the INCOTERMS as prevailing from time to time and published by the International Chamber of Commerce.

1.5 All goods and equipment to be delivered by us on the basis of these General Conditions shall hereafter be referred to as „Product“.

2. Contract Conclusion and Parts of the Contract**2.1 Contract Conclusion**

2.1.1 Our price lists, product descriptions and other documents submitted in advance of concluding a Contract, serve for information purposes only and do not constitute an offer within the meaning of the law.

Our proposals are always non-binding. The contractual offer has to be made by the customer.

2.1.2 Title and copy rights in cost estimates, drawings, designs and other documents remain with us. These drawings and documents must not be disclosed to third parties and, should we not be awarded a Contract, shall be returned to us free of charge without undue delay.

2.1.3 The Contract shall only become effective upon our written order confirmation or on hand over or delivery of the Product.

2.2 Parts of the Contract

Unless otherwise agreed upon in the Contract or elsewhere, the subsequently mentioned documents shall become part of the Contract and shall apply in the following order of precedence:

- Our purchase order confirmation
- The purchase order
- Our proposal including the Technical Specification
- The customer's bid specification

3. Prices

3.1 All our prices shall be understood ex works (EXW) basis, unless otherwise stated in the purchase order confirmation. Prices are exclusive of Value Added Tax, foreign taxes, transportation costs and packaging. Upon delivery of the Product, we shall have fulfilled our delivery obligation, and the risk of accidental loss of or damage to the Product shall pass to the customer.

3.2 Packaging shall not be taken back.

3.3 Should any taxes, customs duties or other dues be newly introduced or increased after purchase order confirmation, any additional costs resulting therefrom shall be reimbursed to us.

4. Payment Terms

4.1 Unless otherwise stated in the order confirmation, the invoice amount shall become due and payable 30 days from receipt of the invoice.

Cheques and bills of exchange will only be accepted upon specific agreement and only on account of fulfilment; we are entitled to decline acceptance thereof.

4.3 Any set-off or the exercise of a retention right towards our claims and demands is excluded, unless any counter claims were finally and bindingly awarded by court, are non-disputed or accepted by us.

4.4 In case of financial difficulties of the customer (e.g. payment default, cheque or bill protest) we are entitled to immediately request payment of all outstanding or deferred invoices and to demand either advance payment or provision of a payment security. If advance payment or provision of security is not made within a reasonable period of time set by us, we may rescind the Contract or refuse to make further deliveries or to render further services and raise claims for non-performance.

4.5 The decisive criterion for the timely fulfilment of payment obligations is the unconditional receipt of the invoice amount on our contractually designated bank account. Delayed payments are subject to default interest at the rate of 8% per annum.

5. Retention of Title

5.1 Until complete fulfilment of all existing obligations out of or in connection with the business relationship between the customer and ourselves, including all collaterals, claims for damages and encashment of cheques and bills, the Products shall remain our property. The customer shall be entitled to process and sell the Products delivered under such retention of title within the ordinary course of his business, as long as the customer is not in default with its obligations. Any pledging or transferring of title as a security to third parties is not permitted.

5.2 In case of breach of duties or obligations by the customer, particularly in case of payment default, we are entitled to suspend further performance or, upon reminder, to rescind the Contract with immediate effect and to demand return of the said Products to us.

5.3 Any application for the opening of insolvency procedures shall entitle us to demand immediate return of the Products delivered subject to retention of title.

6. Product and Delivery**6.1 Product**

6.1.1 Any information about the Product and its function, its weight, measures, performance, prices, colours and other data contained in our catalogues, prospectus, newsletters, advertisements, pictures, price lists and/or other documents shall not be construed as having been agreed upon as long as they shall not have been expressly referenced in the Contract.

6.1.2 Should no standards be specifically agreed upon, European standards and norms shall be deemed agreed and, in the absence of which, the generally recognised commercial and technical standards shall apply.

6.1.3 We are not obliged to review any documents and information submitted to us by the customer or its agents in whatever form with respect to their completeness and accuracy; henceforth, we shall not be liable for any errors, defects or deficiencies or other incorrectness or incompleteness.

6.1.4 To the extent agreed, we shall make available documents and information that enable the customer to install, operate and maintain the Product; we are, however, not obliged to furnish the customer with manufacturing or work shop drawings.

6.2 Delivery

6.2.1 Delivery dates and periods, that can be agreed bindingly or non-bindingly, need to be fixed in writing. Periods shall commence on dispatch of the order confirmation, however, not earlier than before the

customer shall have provided all agreed final documents, approvals, drawings and other conditions precedent as well as final clarification of all necessary technical details. Delivery periods shall have been complied with, when, before their expiry, the Product has left our facilities or readiness for delivery EXW was notified to the customer.

6.2.2 Delivery and execution periods shall be reasonably extended in case of force majeure or other events outside our influence, which cannot be reasonably foreseen, such as, without limitation, natural catastrophes, labour disputes (strikes and lock-outs), war, civil war, sabotage or terrorism, if such events cause delay in delivery with us or our sub-suppliers,

6.2.3 Delivery by us is subject to ourselves being properly supplied by our sub-suppliers, unless we shall have expressly assumed the procurement risk.

6.2.4 Dispatch of Products shall be done only upon specific agreement. Should delivery be postponed at the request of the customer, the risk of accidental loss or damage shall pass to the customer upon notice of readiness for shipment.

6.2.5 Partial shipment shall be permitted to the extent reasonable.

6.2.6 In case of a bindingly agreed upon delivery date being exceeded for reasons solely attributable to us, we shall pay to the customer liquidated delay damages at the rate of 0.5% per week calculated on the value of that part of the Product that cannot be timely or properly used as a result of such delay, however, not exceeding 5% of the total Contract value. It is expressly agreed that in case of delay, the actual loss or damage suffered by the customer may be difficult to ascertain and that, therefore, liquidated delay damages as agreed hereunder, are a genuine pre-estimate of such potential loss or damage, and not a penalty. In each case of delay, the customer must prove that it actually suffered a loss due to such delay. The customer shall forfeit its right to liquidated damages, if the customer has not reserved this right upon receipt of the Product.

6.2.7 If we should not have delivered the Product for reasons solely attributable to us, by the date on which the maximum amount of liquidated damages as per section 6.2.6 was exhausted and, if the Product is still not delivered, the customer may in writing demand delivery within a reasonable final period, which shall not be less than 30 days.

If we still should not have delivered the Product within such final period and this is due to reasons solely attributable to us, then the customer may by written notice declare the Contract terminated in respect of such part of the Product which has not been delivered.

6.2.8 If the customer has terminated the Contract in accordance with the preceding section, the customer shall be entitled to compensation of the proven direct loss exceeding the amount of liquidated damages, which it has suffered as a result of our delay. The total compensation, including the liquidated damages for delay payable in accordance with the preceding section shall not exceed 10% of the total Contract value.

6.2.9 Should delivery be postponed for reasons due to the customer, the customer shall compensate us for any additional costs resulting therefrom and delivery periods shall be extended correspondingly.

6.2.10 Liquidated damages under section 6.2.6 and termination of the Contract with compensation as per sections 6.2.7 and 6.2.8 are the sole and exclusive remedies available to the customer in case of delay on our part with respect to any non-compliance with contractually agreed dates. All other claims against us based on such delay shall be excluded to the maximum extent permissible under applicable law. Above limitations and exclusions of liability do not apply in case of our unlawful intent or gross negligence, except to the extent where a loss or damage was caused by any person employed or appointed by us (e.g. any employee or vicarious agent).

7. Defects Liability

7.1 Defects as to Quality

7.1.1 We warrant that the Products are free from any defect or deficiency in design and workmanship and they are fit for the purpose as per our product description made known to the customer.

7.1.2 Any drawings, specifications, specimen etc. submitted by the customer shall not affect our warranty hereunder, unless expressly agreed to that effect in writing. Our design is exclusively based on DIN norms and standards, unless otherwise expressly agreed in writing.

7.1.3 To the extent a Product is defective for a reason due to us, we are obliged and entitled, at our sole discretion and up to 2 (two) times, to either repair or replace the defective Product free of charge to the customer. In any such case, we are obliged to bear the costs and expenses of such repair or replacement excluding any costs for dismantling, re-installation, transportation or customer's labour costs, unless expressly agreed otherwise in the Contract. Only where the non-conformity has not been successfully remedied in accordance with the foregoing,

- (a) the customer is entitled to a reduction of the purchase price in proportion to the reduced value of the defect Product, provided, that under no circumstances such reduction shall exceed 50% of the price of the defect Product; or,
- (b) where the non-conformity is so substantial as to significantly deprive the customer of the benefit of the Product beyond the above limit of price reduction, the customer may rescind the Contract in respect of such defect Product by giving written notice to us.

Parts that we have replaced shall become our property.

7.1.4 Our warranty is subject to our immediate written notification of any defect by the customer. The customer shall grant us free and unimpeded access to the Products to avail us of the opportunity to verify the existence of a defect or deficiency that is subject to our warranty, otherwise we are released from warranty.

7.1.5 The customer shall be entitled to substitute remedial action only in emergency cases, e.g. for the prevention of significant loss of or damage to property or in order to prevent serious danger to the health of persons. Regardless of the foregoing, the customer shall notify us of such situation without undue delay.

We shall not be liable for the consequences of any improper substitute performance; this shall also apply with respect to any modification to the Product that was made without our prior written consent.

7.1.6 The warranty period shall be one (1) year from delivery of the Product, which, with respect to any repaired or replaced part shall be extended by another year, however, in the aggregate for no longer than twelve (12) months after the expiration of the original warranty period.

7.1.7 We are not liable hereunder for (i) non-conformity of the Product arising out of materials provided by or a design made or specified by the customer or (ii) normal wear and tear or non-conformities caused by the use of corrosive materials, incorrect solvents, fluids or lubricants, unsuitable raw material and/or incorrect power or (iii) non-conformities which are caused by faulty storage, incorrect erection/installation, operation, maintenance or faulty repair by the customer or third parties or by alterations carried out without our consent in writing or (iv) any other event beyond our reasonable control.

We shall not be liable under warranty in case of insignificant defects or deficiencies.

7.1.8 Payments due may only be withheld in reasonable proportion to the value of defect occurred.

7.2 Defects in Title

7.2.1 In case that use of the Product should infringe any third party's industrial property or copy right in the customer's country, we shall procure, at our charge, the right for the customer to continue to use the Product or we shall modify the Product such that it becomes non-infringing without thereby unreasonably limiting the functionality of the Product. Should the foregoing not be possible at commercially reasonable conditions, the Contract may be rescinded.

7.2.2 The foregoing rights of the customer shall only be applicable, if

- The customer shall have notified us of the occurred or alleged infringement without undue delay;

- The customer provides reasonable support to us in the defence against claims or in the modification of the Product;
- The customer has used the Product in a Contract compliant manner and/or did not modify it;
- The infringement was not caused by an instruction given by the customer;
- The customer shall not unreasonably disagree with a possible out-of-court settlement.

7.3 The provisions of this section 7 shall apply subject to the provisions of section 8.

7.4 The above liability for defects or deficiencies or other non-conformity of the Product is made in lieu of all other liabilities or warranties, expressed or implied, including but not limited to any implied warranty of merchantability and/or fitness for a particular purpose and is made in lieu of all other obligations or liabilities on our part of any nature whatsoever.

8. Liability

8.1 We are liable to the customer for direct damages to property and injury to or death of any person provided those property damages and bodily injuries or death to persons are attributable to the negligence of ourselves or our employees.

Our liability for damages to property is limited to a maximum of 5 million EUR per accident, in total, however, not exceeding 10 million EUR per year.

8.2 Notwithstanding anything implicitly or expressly provided for to the contrary either in the Contract or by the applicable law, in no event, whether as a result of breach of Contract, warranty, tort (including negligence) or otherwise, shall we be liable (i) for loss of profit or revenues, loss of use of the Product or any associated equipment, loss of hire, cost of capital, cost of substitute goods, downtime costs or claims of customer's customers for such losses and damages or (ii) for any special, consequential, incidental, indirect, exemplary or punitive damages. The foregoing limitations and exclusions of liability do not apply in case of our unlawful intent or gross negligence, except to the extent where a loss or damage was caused by any person employed or appointed by us (e.g. any employee or vicarious agent).

8.3 If we furnish the customer with advice or other assistance which may concern any Product supplied hereunder and which is not required by the Contract or otherwise in writing, such advice or assistance is given on a good will basis only and shall not be subject to any warranty or other liability, whether in Contract, tort (including negligence) or otherwise, unless expressly otherwise agreed upon in writing.

9. Use of Software

9.1 To the extent also software is part of our scope of supply, the customer shall be granted the non-exclusive and non-transferable right to use such software including any documentation ancillary thereto, in direct connection with Contract compliant use of the Product. Sub-licensing is prohibited.

9.2 Any duplication, modification, translation or conversion of the software shall be allowed only to the extent legally permissible. Any removal or modification of manufacturers' data are not permitted without our prior written approval.

10. Industrial Property and Copy Rights, Confidentiality

10.1 Industrial Property and Copy Rights

Unless expressly otherwise agreed upon in writing, the customer shall not obtain industrial property or copy rights or the intellectual property in software, drawings, technical information, documents, data, calculations and other information (together „Information“) that are submitted to the customer. We shall remain the sole owner of all these rights to or in connection with the Product.

10.2 Confidentiality

The customer shall treat all Information submitted to the customer in strict confidence, shall not disclose them to any third party and shall not

make use of them for any purpose other than as provided for in the Contract, unless any such disclosure is legally mandatory.

11. Place of Performance and Place of Venue

11.1 Place of performance for all supplies and payments shall be Gräfelfing.

11.2 This Contract shall be governed by and construed in accordance with the substantive laws of Switzerland, provided, that Swiss conflict of laws rules shall not be applied and the United Nations Convention on Contracts for the International Sale of Goods ("CISG") shall not be applied.

11.3 Unless otherwise agreed in writing, all disputes arising out of or in connection with the present Contract shall be finally settled under the rules of arbitration of the International Chamber of Commerce, Paris, by one arbitrator appointed in accordance with the said rules. The place of arbitration shall be Zurich, Switzerland. The language of arbitration shall be English. However, we shall, at our sole discretion, be entitled to initiate court proceedings before any competent ordinary court at Zurich or at our or customer's place of business.

Gräfelfing, January 2017