

General Terms and Conditions of Delivery and Payment of Sanitärtechnik Eisenberg GmbH

valid from: 21.03.2024

1 Scope of application

- 1.1 All deliveries and services provided by us - including future deliveries and services - to natural or legal entity or partnerships with legal capacity who are acting in the exercise of their commercial or independent professional activity ("Unternehmer") when concluding the contract (entrepreneurs within the meaning of Section 310 (1) BGB) as well as to legal persons under public law ("Juristische Personen des öffentlichen Rechts") or special funds under public law ("öffentlich rechtliche Sondervermögen") shall be governed exclusively by our General Terms and Conditions of Delivery and Payment (hereinafter referred to as "Terms and Conditions of Delivery").
- 1.2 Deviating terms and conditions of the customer which we do not expressly consent to are not binding for us, even if we do not expressly object to them. Our Terms and Conditions of Delivery shall also apply without reservation if we carry out the delivery in the knowledge of conflicting or deviating terms and conditions of the customer.
- 1.3 These Terms and Conditions of Delivery shall also apply in their current version as a framework agreement (Section 305 (3) BGB) for future offers and contracts for the sale or delivery of movable goods with the same customer, without us having to refer to them again in each individual case. We shall inform the customer immediately of any changes to our Terms and Conditions of Delivery.

2 Conclusion of contract

- 2.1 Our offers are subject to change and non-binding unless they are expressly labelled as binding or contain a specific acceptance period.
- 2.2 Our written order confirmation shall be decisive for the scope of delivery.
- 2.3 Changes to the technical design of the ordered products are permissible unless this results in a significant functional change or the change is unreasonable for the customer.
- 2.4 Our information on the object of the delivery or service (e.g. dimensions, other figures, resilience, tolerance and technical data) as well as the representation of the same (e.g. drawings and illustrations) are only authoritative insofar as the usability for the contractually stipulated purpose does not require exact conformity. They are not a guarantee of the quality characteristics ("Garantie der Beschaffenheitsmerkmale"), but a description or labelling of the delivery or service. We only assume a guarantee for the quality of an item if this has been expressly promised in our order confirmation or in our advertising.
- 2.5 We reserve our property rights, copyrights and

other industrial property rights to all illustrations, calculations, drawings and other documents produced by us. The customer may only pass these on to third parties with our prior consent in text form, irrespective of whether we have labelled them as confidential.

3 Prices and terms of payment

- 3.1 Unless otherwise stated in the order confirmation, our prices are "ex works" (EXW, Incoterms 2020). The costs for packaging, dispatch, insurance and customs duties etc. shall be invoiced separately. We are entitled to invoice partial deliveries separately, insofar as we are authorised to make such deliveries in accordance with clause 4.2.
- 3.2 In the case of goods or services for which delivery or performance periods of more than four months exist and in the case of goods or services which are provided within the framework of continuing obligations, we reserve the right to increase our prices accordingly if cost increases occur after conclusion of the contract, in particular due to collective labour agreements or material price increases. We shall provide evidence of such increases to the customer upon request. The provision contained in this paragraph shall not apply if there are less than 4 months between the conclusion of the contract and the agreed delivery date.
- 3.3 The statutory value added tax (VAT) is not included in our prices; it will be shown separately on the invoice at the statutory rate on the day of invoicing.
- 3.4 The deduction of discounts requires a special written agreement.
- 3.5 Unless otherwise stated in the order confirmation, payment must be made without any deductions within 14 days of receipt of our invoice, but no later than 30 days after delivery. The statutory provisions regarding the consequences of default in payment shall apply.
- 3.6 The customer shall only be entitled to set-off rights if his counterclaims have been legally established, are undisputed or have been recognised by us. Only under these conditions is the customer also authorised to exercise a right of retention if his counterclaim is based on the same contractual relationship. In the event of defects ("Mängel"), the customer's counterclaims arising from the same contractual relationship shall remain unaffected.
- 3.7 In the event of non-compliance with the terms of payment or in the event of circumstances which call into question the creditworthiness of the customer, we shall be entitled to demand immediate cash payment for all deliveries. In addition, we shall be entitled to execute outstanding deliveries only against advance payment or provision of security or to withdraw from the contract and demand compensation. We are also entitled to prohibit the resale of goods delivered that

are subject to retention of title and to reclaim the goods immediately at the customer's expense if we have withdrawn from the contract.

4 Delivery, force majeure, delivery date

- 4.1 The specification of certain delivery periods and dates is subject to the proviso that we ourselves are supplied on time and correctly.
- 4.2 We shall be entitled to render partial services to a reasonable extent.
- 4.3 The commencement of the delivery period is subject to the timely and proper fulfilment of the customer's obligations. This means, if these obligations are not fulfilled on time, the delivery period shall be extended accordingly. The defence of non-performance of the contract ("*Einrede des nicht erfüllten Vertrags*") remains reserved.
- 4.4 We shall not be liable for impossibility of delivery and performance or for delays in delivery or performance if these were caused by force majeure or other events unforeseeable by us at the time the contract was concluded.
- 4.5 Force majeure in the context of these Terms and Conditions of Delivery is any event beyond our control which prevents us from fulfilling our obligations in whole or in part, including fire damage, floods, strikes and lawful lockouts, unexpected pandemics or epidemics, shortages of labour, energy or raw materials and operational disruptions or official orders for which we are not responsible, as well as difficulties in obtaining necessary official permits.
- 4.6 We shall notify the customer immediately of the occurrence and cessation of force majeure without undue delay and shall use our best endeavours to limit the effects of force majeure as far as possible.
- 4.7 For the duration of such an event of force majeure, we shall be released from our obligation to perform. In the event of hindrances due to force majeure that are of temporary duration, the delivery or performance periods shall be extended, or the delivery or performance dates postponed by the period of the hindrance plus a reasonable start-up period ("*Anlauffrist*").
- 4.8 This shall also apply if such events, which are to be classified as force majeure (see clauses 4.4 to 4.7), demonstrably occur or have occurred at our suppliers and subcontractors and we are therefore not supplied or not supplied on time.
- 4.9 If performance and/or delivery is delayed unreasonably (in particular by more than one month) due to force majeure and if the obstacle to performance or delivery cannot be overcome by reasonable efforts, we shall be entitled to withdraw from the contract ("*Rücktrittsrecht*") with regard to the quantity affected by the delivery disruption. This does not apply to continuing obligations ("*Dauerschuldverhältnissen*").
- 4.10 The right of withdrawal ("*Rücktrittsrecht*") under the conditions set out in clause 4.9 shall also

apply if the customer was initially notified of an extension of the delivery period.

- 4.11 The customer shall not be entitled to any claims for damages in the cases mentioned in clauses 4.3 to 4.10 above.
- 4.12 A delivery period or delivery date shall be deemed to have been met if readiness for dispatch or collection has been notified by the expiry date or the goods have left the factory or warehouse or have been handed over to the forwarding agent, carrier or other person entrusted with the transport.
- 4.13 The occurrence of a delay in delivery shall be determined in accordance with the statutory provisions.
- 4.14 In the event of a delay in delivery for which we are responsible, the customer is exclusively entitled to demand a lump-sum compensation for delay in the amount of 0.5% of the net invoice value for each completed calendar week of delay, up to a maximum of 5% of the net invoice value, provided that he can credibly demonstrate that he has suffered damage as a result. We reserve the right to prove to the customer that no damage or significantly lower damage has occurred as a result of the delay in delivery. Both claims for damages by the customer due to delayed delivery and claims for damages in lieu of performance that exceed the aforementioned limit are excluded in all cases of delayed delivery.
- 4.15 The rights of the customer pursuant to clause 8 of these Terms and Conditions of Delivery and our statutory rights, in particular in the event of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or subsequent fulfilment), shall remain unaffected.
- 4.16 If we are responsible for the delay in delivery, the customer may withdraw ("*Rücktritt*") from the contract if he has previously set us a reasonable period of grace ("*Nachfrist*") and this has expired without result. At our request, the customer is obliged to declare within a reasonable period of time whether he is cancelling the contract due to the delay in delivery or insists on delivery. This shall not apply if a commercial transaction for delivery by a fixed date ("*kaufmännisches Fixgeschäft*") has been agreed.

5 Transfer of risk

- 5.1 Unless otherwise stated in the order confirmation, delivery "ex works" ("*ab Werk*") is agreed.
- 5.2 At the request of the customer, we shall take out transport insurance for the delivery to protect against the usual transport risks; the costs incurred in this respect shall be borne by the customer.
- 5.3 In the case of agreed deliveries, the risk of accidental loss or accidental deterioration of the delivery, even in the case of carriage paid delivery, shall pass to the customer as soon as the delivery has been handed over to the person carrying out the transport or has left our warehouse for the purpose of dispatch.
- 5.4 If, in fulfilment of our obligation to perform, we are only obliged to make the delivery ready for collection at our

premises and if the delivery has already been made ready for dispatch or collection and our notification of readiness for dispatch or collection has been received by the customer, the risk of accidental loss or accidental deterioration of the delivery shall pass to the customer if collection is delayed for reasons for which we are not responsible. If notification of readiness for dispatch is not given, the risk shall pass to the customer when the goods are handed over to the carrier, but at the latest when they leave our factory or warehouse. This shall also apply if our means of transport or carriage paid delivery is used.

6 Retention of title

- 6.1 In all cases, we reserve title to all goods delivered. Ownership shall only be transferred to the customer after full payment of all our current and future claims arising from the purchase contract and an ongoing business relationship ("*gesicherte Forderungen*").
- 6.2 In the event of seizure ("*Pfändungen*") or other interventions by third parties, the customer must inform us immediately so that we can file a suit in accordance with § 771 ZPO (German Code of Civil Procedure). If the third party is not in a position to reimburse us for the court costs of a corresponding action, the customer shall be liable for the loss incurred by us.
- 6.3 The customer shall be entitled to resell the delivered goods in the ordinary course of business; however, he hereby assigns to us all claims in the amount of the final invoice amount (including value added tax) which accrue to him from the resale against his customers or third parties, irrespective of whether the item has been resold without or after processing. We hereby accept this assignment.
- 6.4 The customer shall remain authorised to collect the assigned claims even after the assignment. Our authorisation to collect the claim ourselves remains unaffected by this. However, we undertake not to collect the claim as long as the customer fulfils his payment obligations to us from the proceeds received, is not in default of payment to us and no application for the opening of insolvency proceedings has been filed against his assets or he has not suspended his payments. As soon as we are able to collect assigned claims ourselves, the customer is obliged, at our request, to inform us of the assigned claims and their debtors, to provide all information necessary for collection, to hand over the relevant documents to us and to notify the debtors (third parties) of the assignment.
- 6.5 The customer shall be entitled to use and process/convert ("*Verarbeiten/Umbilden*") the goods in the ordinary course of business. The processing ("*Verarbeitung*") or transformation ("*Umbildung*") of the delivered goods by the customer shall always be carried out on our behalf. If delivered goods are processed

("*verarbeitet*") with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of the delivered goods to the other processed items ("*verarbeitete Gegenstände*") at the time of processing ("*Verarbeitung*"). In all other respects, the same shall apply to the item created by processing as to the goods delivered under reservation of title.

- 6.6 If the delivered goods are inseparably mixed ("*Vermischung*") with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of the delivered goods to the other mixed items ("*vermischte Gegenstände*") at the time of mixing ("*Vermischung*"). If the mixing ("*Vermischung*") takes place in such a way that the delivered goods are to be regarded as the main item, it is agreed that the customer shall transfer co-ownership to us on a pro rata basis. The customer shall keep the sole ownership or co-ownership thus created for us in custody until otherwise claimed.
- 6.7 In the event of behaviour in breach of contract for which the customer is responsible ("*vom Besteller zu vertretendes, vertragswidriges Verhalten*"), in particular in the event of default in payment, we shall be entitled to take back the goods delivered subject to retention of title and the customer shall be obliged to surrender them. Our taking back or seizure of the goods subject to retention of title shall not constitute a cancellation of the contract. In the event of repossession ("*Rücknahme*"), we shall be entitled to utilise the delivered goods to the best possible extent at our discretion after setting a reasonable deadline. The realisation proceeds shall be offset against our claims after deduction of reasonable realisation costs.
- 6.8 If, in the case of export transactions, certain measures are required at the place where the delivered goods are located after delivery in order for the reservation of title or the assignment to be effective, the customer must inform us of this and carry out such measures at his own expense. If, at the place where the delivered goods are located after delivery, retention of title or the otherwise aforementioned rights ("*vorbehandelte Rechte*") cannot be considered, the customer shall do everything at his own expense to procure for us the most similar security rights ("*Sicherungsrechte*") to the delivered goods.
- 6.9 We undertake to release the securities ("*Sicherheiten*") to which we are entitled at the request of the customer if the realisable value of our securities ("*Sicherheiten*") exceeds the claims to be secured by more than 10%. We shall be responsible for selecting the securities to be released.
- 6.10 The customer is obliged to insure the goods adequately for as long as our retention of title applies.

7 Notice of defects, claims for defects, limitation period

- 7.1 If the customer is a merchant ("*Kaufmann*"), under German law the assertion of warranty rights requires that he has properly fulfilled his obligations to inspect and give notice of defects in accordance with § 377 HGB (German Commercial Code). This standard

applies accordingly to entrepreneurs ("Unternehmer"). In the case of building materials and other goods intended for installation or other further processing, an inspection according to Sec. 377 HGB must always be carried out immediately before processing.

Notices of defects must be made by the customer in writing immediately after receipt of the goods, but at the latest within eight calendar days of delivery. The same period applies to hidden defects from discovery. Claims for defects that are not notified or not notified in good time or not properly notified in good time shall lapse. In the case of goods intended for assembly, mounting or installation, this shall also apply if the defect only becomes apparent after the goods have been processed accordingly as a result of a breach of one of the aforementioned obligations; in this case, the customer shall in particular have no claims for reimbursement of the corresponding costs ("Ein- und Ausbaukosten").

7.2 We shall, at our discretion, either rectify ("nachbessern") a defect in the delivered goods or take the goods back and deliver new goods (replacement delivery). We may refuse subsequent fulfilment ("Nacherfüllung") if it is only possible with disproportionate costs or disproportionate effort and the other type of subsequent fulfilment ("Nacherfüllung") remains without significant disadvantages for the customer.

Subsequent fulfilment ("Nacherfüllung") does not include the dismantling, removal or uninstallation of the defective goods or the assembly, fitting or installation of defect-free goods, if we were not obliged to provide these services under the delivery contract concluded; the customer's claims for reimbursement of corresponding costs ("Aus- und Einbaukosten") remain unaffected.

7.3 If the subsequent fulfilment ("Nacherfüllung") fails or is finally refused by us, the customer may withdraw from the contract or demand a reduction in the delivery price.

7.4 Claims for defects ("Mängelansprüche") do not arise

- in the event of only insignificant deviation of the delivered goods from the agreed quality ("vereinbarte Beschaffenheit"),
- with only insignificant impairment of usability,
- with natural wear and tear,
- if the customer or a third party undertakes measures to rectify defects without demonstrably having previously notified us of the defects and having set us a reasonable deadline to rectify them, and
- in the event of damage arising after the transfer of risk ("Gefahrübergang") as a result of incorrect or negligent handling, excessive use, etc..

7.5 Claims for defects shall also not arise if our goods are combined with products of other manufacturers (hereinafter referred to as "third-

party products"), but these third-party products have not been expressly approved by us for a combination or joint operation, and the defect ("Mangel") is exclusively attributable to this combination of our goods with the third-party product.

7.6 The limitation period ("Verjährungsfrist") for claims for defects is:

- a) 5 years for the delivery of goods that have been used for a building in accordance with their normal use and have caused its defectiveness;
- b) 1 year for the delivery of other new goods to entrepreneurs ("Unternehmer");
- c) in all other instances 2 years.
- d) Liability for defects is excluded for the delivery of used goods to companies.
- e) Liability for culpable damage to life, limb or health ("schuldhafte Verletzung des Lebens, des Körpers oder der Gesundheit") or which is based on an intentional or grossly negligent breach of duty by us ("vorsätzliche oder grob fahrlässige Pflichtverletzung"), our legal representatives or our vicarious agents remains unaffected. This also applies to liability under the Product Liability Act ("Produkthaftungsgesetz"). These claims shall become time-barred in accordance with the statutory provisions.
- f) Further special statutory provisions on the statute of limitations (in particular Sec. 438 para. 1 no. 1, para. 3, Sec. 444, 445 b BGB) shall also remain unaffected.

7.7 The limitation period for claims for defects shall commence upon delivery of the item; if acceptance is required, upon acceptance.

7.8 In the case of replacement delivery ("Ersatzlieferung") and rectification of defects ("Mängelbeseitigung"), the limitation period for the replaced or repaired goods shall not begin anew, even in cases of goodwill. If, in exceptional cases, there is an acknowledgement, this shall only relate to those defects that were the subject of the request for subsequent fulfilment.

7.9 Claims by the customer for expenses incurred for the purpose of subsequent fulfilment ("Ansprüche des Bestellers wegen zum Zweck der Nacherfüllung erforderlicher Aufwendungen") are excluded insofar as they increase because the delivered goods have subsequently been moved to a location other than the customer's branch office, unless the transfer corresponds to the intended use of the delivered goods.

7.10 Recourse claims of the customer ("Rückgriffsansprüche") against us in accordance with Sec. 478 BGB shall only exist insofar as the customer has not made any agreements with his customer that go beyond the statutory warranty rights. Clause 7.9 shall apply accordingly to the scope of recourse claims ("Rückgriffsansprüche").

8 Other liability

8.1 Unless otherwise stated in these Terms and Conditions of Delivery, including the following provisions, we shall be liable in the event of a breach

of contractual and non-contractual obligations in accordance with the statutory provisions.

- 8.2 We shall be liable for damages - irrespective of the legal grounds - within the scope of fault-based liability ("*Verschuldenshaftung*") in cases of intent and gross negligence ("*grobe Fahrlässigkeit und Vorsatz*"). In the event of simple negligence ("*einfache Fahrlässigkeit*"), we shall only be liable, subject to a reduced standard of liability, in accordance with the statutory provisions (e.g. for care in our own affairs, insignificant breach of duty)
- a) for damages resulting from damages to life, limb or health,
 - b) for damages arising from the not insignificant breach of a material contractual obligation ("*Verpflichtung, deren Erfüllung des Vertrags überhaupt erst ermöglicht und auf deren Einhaltung der Vertragspartner regelmäßig vertraut und vertrauen darf*"); in this case, however, our liability is limited to compensation for the foreseeable, typically occurring damage.
- 8.3 The limitations of liability resulting from clause 8.2 shall also apply in the event of breaches of duty by or in favour of persons whose fault we are responsible for in accordance with statutory provisions. They shall not apply if we have fraudulently concealed a defect or have assumed a guarantee for the quality of the goods and for claims under the Product Liability Act.
- 8.4 The customer may only withdraw from or terminate the contract due to a breach of duty ("*Pflichtverletzung*") that does not consist of a defect ("*Mangel*") if we are responsible for the breach of duty ("*Verschulden*"). A free right of cancellation ("*freies Kündigungsrecht*") on the part of the customer (in particular in accordance with Sec. 650, 648 BGB) is excluded. In all other respects, the statutory requirements and legal consequences shall apply.

9 Return of goods

Defect-free goods can only be returned ("*Rücksendungen*") after prior agreement and with our written consent. Goods returned carriage forward ("*unfreie Warenrücksendungen*") will not be accepted. Customised products ("*Sonderanfertigungen*"), opened packagings and goods that are no longer saleable cannot be returned. If goods are returned for credit ("*Gutschrift*"), a processing fee of 20 % of the net purchase price of the returned goods will be deducted.

10 Export restriction

The onward delivery ("*Weiterlieferung*") of our goods, including the product descriptions, to the USA or Canada is expressly prohibited and requires our prior written consent.

11 Applicable law, place of fulfilment and place of jurisdiction

- 11.1 German law shall apply exclusively; the application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the conflict of laws rules applicable in Germany are excluded.
- 11.2 Unless otherwise stated in the order confirmation, our registered office is the place of fulfilment.
- 11.3 The following applies to our contracts with customers that are merchants ("*Kaufleute*"), a legal entity under public law ("*juristische Person des öffentlichen Rechts*") or a special fund under public law ("*öffentlich-rechtliches Sondervermögen*"), and that have their registered office in the EU states, Switzerland, Norway or Iceland:
The exclusive place of jurisdiction is Eisenberg or the Jena Regional Court. However, we are also entitled to sue the customer at his registered office.
- 11.4 The following applies to our contracts with customers that are merchants ("*Kaufleute*"), a legal entity under public law ("*juristische Person des öffentlichen Rechts*") or a special fund under public law ("*öffentlich-rechtliches Sondervermögen*"), and that are domiciled in countries other than the EU states, Switzerland, Norway and Iceland:
All disputes arising out of or in connection with supplies and services provided by us shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with these Rules. The seat of arbitration shall be Eisenberg. The arbitration proceedings shall be conducted in German.
- 11.5 The language of the General Terms and Conditions of Delivery and Payment is German. Any German terms in brackets in the English version shall have the meaning under German law without recourse to English or any other law. In the event of any dispute over the wording and interpretation of the English version of the General Terms and Conditions of Delivery and Payment, the German version and the interpretation under German law shall prevail.

Sanitärtechnik Eisenberg GmbH
In der Wiesen 8
07607 Eisenberg
www.sanit.com
Phone: +49 (0) 36691 598-0