

General Conditions of Sale of SYSTHERMS GmbH

1. General Provisions

- 1.1 All supplies and Services of SYSTHERMS GmbH (in the following referred as STS) are additionally subject to the conditions hereinafter set forth. Standard-form contract conditions of the orderer (buyer) shall not apply if a clause according to the INCOTERMS 2000 rules is stipulated his shall apply only inasmuch as not otherwise agreed upon in the present Conditions of Sale.
- 1.3 In case of any provision not included in these General Conditions of Sale, not the standard-form contract conditions of the orderer or buying contractor shall apply but the statutory provisions.

2. Offer/Acknowledgment of Order

- 2.1 Unless a set term is expressly started, offers from STS are without engagement and a contract is only considered as being concluded when the order is acknowledged in writing by STS.
- 2.2 Purchase orders without preceding offer according to item 2.1 do not become binding for STS unless and to such extent as acknowledged in writing by STS. The same applies where the orderer modifies the offer from STS.

3. Sales References

- 3.1 Data contained in catalogues, brochures and folders, as well as general information in data sheets and drawings accompanying quotations are approximate and without engagement, unless expressly stated as binding.
- 3.2 In particular cases STS reserves the right to alter the design and, where there is a shortage of raw material, to use other materials unless opposed by overriding essential concerns of the orderer known to STS.
- 3.3 Regarding all sales references and other documents made available to the customer, STS reserves the right of ownership and copyright, they must neither be used for other purposes nor copied, reproduced or made available to a third party; they do not confer title nor imply the grant of any licence for reproduction of STS products or parts.
- 3.4 All sales references and other documents made available to the customer are to be returned to STS immediately upon request; they must be returned without being requested if the order is not placed with STS.

4. Prices, Packing, Insurance

- 4.1 The prices are quoted ex works or manufacturing plant, respectively (EXW, INCOTERMS 1990) - excluding packing, erection and start-up. Packing is charged at cost price.
- 4.2 The sales price does not include any sales, excise, turnover or freight transportation tax etc. nor any export, import or other duties to be additionally charged by STS, as the case may be in accordance with official regulations at the time of fulfillment of the contract.

- 4.3 Unless the orderer (buyer) expressly determines otherwise, STS shall insure the ordered goods against the usual transport risks including breakage and charge the cost incurred to the orderer.

5. Erection and Start-Up

- Provided that erection, supervision of erection or start-up have to be carried out, the relevant additional Conditions of STS are valid, which will be made available by STS upon request.

6. Passing of Risk

- 6.1 Risk shall pass to the orderer (buyer) pursuant to the INCOTERMS 1990 rules agreed upon. In the absence of such agreement the risk shall pass to buyer on delivery of the goods to the first carrier. This shall also apply to partial shipments or where STS has undertaken the assume supplemental services and payments, such as the cost of dispatch, carriage and erection.
- 6.2 If dispatch is delayed by reasons of buyer's responsibility and beyond STS's control, risk shall pass to buyer upon notice of readiness for dispatch.

7. Delivery Dates

- 7.1 The delivery period commences when all commercial and technical requirements for the performance of the contract have been clarified, documents to be supplied by the orderer have been received by STS, any official authorization or release that may be required has been issued and (advance) payments provided for in the contract have been credited to STS's bank account. Adherence to the time of delivery shall be subject to the timely fulfillment of the contractual obligations by buyer. The goods are deemed to have been delivered in time if handed over to the first carrier or declared ready for dispatch to buyer before expiration of the delivery period agreed upon. Partial deliveries are permitted to a reasonable extent. Minor defects do not affect buyer's obligation to take delivery of the goods; in that respect the delivery period shall be deemed to have been observed.
- 7.2 The delivery is delayed for reasons imputable to buyer or the goods not called for in due time, STS at its discretion shall be entitled to store the goods at buyer's risk, to invoice the goods as delivered ex works and to charge buyer with the storage fees; if stored in STS's premises such storage fees are at least 0,5 % of the invoiced sum for each month from the date of readiness for dispatch. STS shall furthermore be entitled, after having set a reasonable term to buyer to take delivery and after expiration thereof, to sell or to dispose of the goods in any other way and to deliver other goods to buyer after a reasonable extended period.
- 7.3 If delivery is delayed by unforeseen events beyond STS's control (Acts of God), the delivery period shall be reasonably extended, at the latest by six months, however. Acts of God are considered to be also strikes, lockouts, sabotage, material and energy shortage, operating breakdown incurred through no fault of STS

important tools or work pieces becoming useless through no fault of STS, non or delayed issuance of official authorizations, as well as any other unforeseen events.

8. Terms of Payment

- 8.1 Payments shall be made within 30 days from the date of invoice, unless otherwise stipulated in STS's offer and/or acknowledgement of order. In case of partial shipments, STS shall be entitled to issue invoices in part accordingly. If payment has been effected in another currency than DM (Deutsche Mark) the claim shall be deemed to have been settled only if the foreign exchange payment corresponds to the stipulated amount of DM at the date of receipt of payment, i.e. when the amount is credited to STS's account.
- 8.2 Payments shall be made exclusively to one of STS's accounts and shall be effected post-free and exempt of charges at the date due without any deduction. Fees, expenses or sundries incurring to STS by accepting bills or cheques upon specific agreement between STS and buyer shall be at the buyer's expense. Determination when payment becomes due shall be in respect of the date of invoice or notice of readiness for dispatch. The date of fulfillment of all kind of payments shall be that on which the sum paid is actually at STS's disposal.
- 8.3 Withholding of payment because of counterclaims or setting payments off against any counterclaims is only permissible if such counterclaims are uncontested or legally ascertained.
- 8.4 When payment is delayed beyond due date STS shall be entitled, as far as default conditions are given and without prejudice to any further claims, to charge default interests at a rate of 3 % above the prevailing German Federal Bank rate. Additionally, the total claims of STS shall become due in cash, without notice of default and irrespective of any bills or cheques that should have been accepted for fulfillment.

9. Reservation of Property Right

- 9.1 STS reserves the property rights in the goods supplied until payment in full has been made in respect of any claims whatsoever resulting out of STS's business transactions with buyer including supplementary claims. If buyer is in default of payments, STS shall without formal notice be entitled to taking back the goods as security. Claiming the right of property and distraint of delivery items by STS shall not be deemed as cancellation of the contract, unless the customer Loan Act applies. Where special regulations or any other provisions are applicable in the country of buyer or of destination of the goods in respect of the validity of the reservation of property rights, buyer himself shall undertake to carry out the terms of such regulations or provisions to safeguard STS's rights
- 9.2 Buyer is entitled to dispose of delivery items in the course of regular business. Claims arising at buyer during the period of STS's property right and resulting from such or unjustified dispositions shall even now be assigned to STS. Subject to revocation at any time, buyer shall be authorized to collect the claims.
- 9.3 STS undertakes to release on buyer's request securities it is lawfully entitled to inasmuch as their sum will exceed the unsettled claims to be secured by more than 20 %.
- 9.4 Any working on the goods and any processing of the goods supplied shall be undertaken by buyer for STS without STS's engagement. In case the goods supplied are used for, connected, mixed or mingled with another equipment not owned by STS (§ 947 and following, BGB) STS shall be entitled to a co-ownership in the new equipment pro rata the value of the goods supplied to the remaining equipment which existed before the date of working, processing, connecting, mixing or mingling. If buyer acquires sole title by operation of law, he shall grant to STS a corresponding co-ownership share and thus hold the equipment in trust of STS. The provisions in Paragraph 9 shall equally apply to the co-ownership share.
- 9.5 Distraints or any other such measures imposed by third parties must be reported by buyer without delay to STS.
- 9.6 During the period of reservation of property rights buyer undertakes to fully insure the goods supplied at his own expense against risks and damages, such as robbery, breakage, fire and water and, upon request, to furnish proof thereof to STS. In case that buyer fails to furnish such proof requested within a reasonable period of time, STS shall be entitled to take out such insurance at buyer's expense.

10. Warranties

- 10.1 STS undertakes at its discretion to repair or to replace any goods supplied or parts thereof resulting defective prior to passing of the risk (e.g. owing to faulty design, defect in material or workmanship, failure to reach the performance figures quoted). STS ensures no warranty claims in case of normal wear, replacement materials, which are in regard to their material quality or their application subject to more strength of wear or aggravate working conditions (e.g. thermocouple element and their protecting armatures, crucibles and troughs, heating tubes, brick lining and stamping of baths, packings, sealings, plastic parts, heat insulations). Furthermore no warranty claims are ensured by STS for sequels resulting from chemical, electrochemical or electrical faults (when not due to 9c STS's fault) as well as from electric arc or electron beam.
- 10.2 In case of failure of repair or replacement buyer shall be entitled of his discretion to claim rehibition or abatement.
- 10.3 Notice of defects must be given immediately, latest within 3 weeks. The complaint must specify the nature of the found defects or faults and whether they have been discovered of once or only after subsequent treatment or processing of the supplied goods or parts. STS shall be entitled to have the defectiveness checked by its own staff.

- 10.4 After mutual consent buyer shall grant to STS reasonable time and opportunity to proceed with the repairs or replacements as STS may deem necessary at its discretion.

If buyer fails to do so, STS shall be relieved of any warranty or liability. Only in the event of extraordinary cases such as jeopardizing safety of operation or risking excessive damages - whereupon STS shall immediately be notified - or if STS should be in delay or remedying the damage, buyer shall be entitled to remedy the defect himself or to have it remedied by a third party and to recover the cost necessarily incurred from STS.

- 10.5 STS shall bear the direct cost arising from repair or replacement for warranty claims provided they have proven justified and defect has been correctly notified in due course, i.e. the cost for the replaced part including carriage as well as reasonable cost for dismantling and assembly of the part and - provided it can in so far be equitably claimed in the individual case - the cost for making available any of its mechanics and assistants. Any further costs shall be borne by buyer.
- 10.6 The limitation period for warranty claims is 6 months from the date of delivery, for services beginning with the date of taking over, latest from the date of starting up of the goods supplied. In case of delay of shipment, installation and start up, beyond STS's fault, the warranty period ends latest 12 months after transition of danger. The warranty period shall be extended by the period of breakdown or interruption caused by repair under warranty of the goods supplied.
- 10.7 Warranty claims in respect of parts replaced and improvements shall expire after three months, but not before the warranty period for the goods originally supplied.
- 10.8 Concerning any further claims Paragraph 12.4 shall apply.

11. Liability for Patent Infringement

- 11.1 Unless otherwise indicated by STS, the goods supplied are to the best of STS's knowledge of the published prior art free from any third party rights in the Federal Republic of Germany. Should despite this the goods supplied hereunder or part thereof, at the moment of conclusion of contract infringe a third party patent already granted and published in the Federal Republic of Germany or - if the goods supplied expressly comprise a specific process right - infringe on patented process rights for which infringement buyer is sued in legal proceedings, STS shall at its own expense and at its discretion within reasonable time procure for buyer the right to continue to use the goods or part thereof or to modify or replace them with non-infringing goods or process or to withdraw from the contract. STS assumes no additional liability, e.g. for processes, applications, products etc.
- 11.2 If third-party patents are infringed by a design or specification furnished by buyer, the latter shall conduct the defence of STS against any claim and relieve STS in case of implementation.
12. Further Liability of STS;
Buyer's Right to Cancellation
- 12.1 Buyer may terminate the contract if complete performance becomes impossible for STS before passing of the risk. Buyer may demand a reduction in price in case of partial impossibility of delivery of the goods or parts therefore, if he has a rightful interest in rejecting a partial delivery the first sentence shall apply.
- 12.2 If impossibility performance arises through buyer's fault, the latter remains bound to pay the contract price in full. The same applies in case of impossibility of performance owing to delay in taking delivery of the goods provided that STS is not responsible therefore. The payment claim shall be reduced, however, by saved expenses.
- 12.3 In case a delay in delivery is within STS's responsibility and STS does not comply with a reasonable additional period of time which buyer allows to lapse while expressly stipulating that he will reject acceptable of the goods after expiration of such additional period, buyer shall be entitled to terminate the contract.
- 12.4 Any further claims other than expressly stated in these conditions, on legal grounds whatsoever, mainly such as for consequential damages from defects (e.g. operating stockages, loss of profit), as well as nuclear technical working with the supplied goods are excluded if legal permissible.
- 12.5 The provisions set out herein shall apply likewise in favours of STS's employees.

13. Place of Fulfilment, Jurisdiction, Applicable Law

- 13.1 Place of fulfillment shall be Würzburg.
- 13.2 For any dispute arising out of the contract - including actions on bills of exchange or cheques - provided buyer is a merchant, a corporate body or a public trust, action shall be brought before the Court having jurisdiction over STS's place of business or his affiliate executing the delivery STS shall also be entitled to sue buyer before the Court having jurisdiction over buyer's place of business. If parts of these General Conditions of Sale or the contract connected with the supplied goods will be or become void, the other determinations stay effective. The parties will replace the void determinations immediately by an effective analogous term.
- 13.3 Supplementary to all contractual provisions contracts shall be governed by the law of the Federal Republic of Germany. The uniform UN Law of Sales (CISG) is not applicable. To contracts with relations to foreign countries the International and German Conflict Rules shall also not apply.