

General terms and conditions of sale and delivery

Gräff GmbH Temperature, measurement and control technology

1. Scope

1.1 Our sales and delivery conditions apply exclusively. Conditions of the customer that contradict these conditions or deviate from our conditions of sale and delivery are only binding for us if we have expressly acknowledged them in writing.

1.2 Our terms and conditions of sale and delivery also apply if we carry out the delivery without reservation in the knowledge of conflicting or deviating customer conditions.

2. Prices and terms of payment

2.1 The agreed price is from our company headquarters in Troisdorf, excluding postage and packaging.

The agreed price does not include the applicable statutory sales tax, unless we expressly point out that this includes sales tax.

The order confirmation and, insofar as it refers to the price list, the price list valid at the time the contract was concluded are decisive for the prices. If there is a longer period of time than 4 months between conclusion of the contract and delivery, the list prices determined at our reasonable discretion and valid at the time of delivery shall apply.

The prices apply ex works, excluding packaging. The packaging will be charged at cost price and will not be taken back.

2.2 The invoice amount is due for payment within 30 days of the invoice date.

We reserve the right to send cash on delivery.

2.3 All payments are to be made to our company headquarters in Troisdorf.

2.4 The customer can only offset claims that are undisputed or legally binding.

3. Delivery time

3.1 Our delivery times are non-binding unless they have been expressly agreed as binding in writing. Agreed delivery times only begin when all the requirements and information to be met by the customer are available.

3.2 The delivery dates stated by us in order confirmations or other business documents are only approximate unless a fixed period or a fixed date has been expressly agreed, at least in text form. Compliance with the delivery dates requires the timely receipt of all documents, approvals, releases to be supplied by the customer and compliance with the agreed terms of payment and other obligations.

If these requirements are not met in good time, the deadline will be extended appropriately. If an order is changed or supplemented, the delivery time specified in the original order confirmation begins anew.

All delivery times stated by us refer to the time of delivery ex works or warehouse; they are also deemed to have been met upon notification or readiness for dispatch if the goods could not be dispatched on time through no fault of our own.

We are not liable for the impossibility of delivery or for delays in delivery if these are due to force majeure or the occurrence of other comparable unforeseeable events for which we are not responsible (e.g. strikes, lawful lockouts, operational disruptions of all kinds, difficulties in procuring materials or energy, transport delays, lack of manpower, energy or raw materials, difficulties in obtaining the necessary official permits, official measures or the non-existent, incorrect or untimely delivery by suppliers, mobilization, warlike or warlike events). If such events make the delivery or service significantly more difficult or impossible for us and it is not foreseeable that we can provide our service within a reasonable period of time - at the latest within 2 months - we are entitled to withdraw from the contract. In the event of hindrances of a temporary duration, the delivery or service deadlines are extended or the delivery or service dates are postponed by the period of the hindrance plus a reasonable start-up period. In the event of a delay in delivery for which we are responsible, the customer is entitled to set us a reasonable grace period, which must be in writing to be effective.

Partial deliveries are permitted if the partial delivery can be used by the customer within the scope of the contractual purpose, the delivery of the remaining ordered goods is ensured and the customer does not incur any significant additional work or costs as a result.

3.3 The customer can only withdraw from the contract within the framework of the statutory provisions if we are responsible for the delay in delivery.

At our request, the customer is obliged to declare within a reasonable period of time whether he is withdrawing from the contract due to the delay in delivery or whether he insists on the service.

3.4 Both claims for damages by the customer due to delay in delivery and claims for damages in lieu of delivery are excluded in cases of delayed delivery - even after the expiry of a deadline set for delivery.

This does not apply in the case of intent or gross negligence or culpable injury to life, limb or health.

3.5 If the customer is culpably in default of acceptance or if he culpably violates his duties to cooperate, we are entitled to demand compensation for the damage we incur in this respect. Further claims remain reserved.

4. Passing of Risk

4.1 Unless otherwise agreed, delivery ex our works in Troisdorf is agreed. The risk passes to the customer ex works in Troisdorf.

4.2 If the customer is in default of acceptance or culpably violates his obligations to cooperate, the risk of accidental loss or accidental deterioration passes to the customer at the point in time at which the customer is in default of acceptance or debtor.

5. Contract adjustment

5.1 If unforeseen events within the meaning of Section 3.2 significantly change the economic importance or the content of the delivery or have a significant impact on our operations, the contract must be adjusted appropriately, taking good faith into account.

5.2 If an adjustment is not economically justifiable for us, we have the right to withdraw from the contract.

We also have the right to withdraw if, due to an event in the aforementioned sense, an extension of a possibly agreed delivery period has occurred or been agreed.

If we want to make use of our right of withdrawal, we will inform the customer immediately after recognizing the scope of the event.

5.3 The rights to which we are entitled under § 313 BGB remain unaffected.

6. Acceptance

Delivered items are to be accepted by the customer immediately on the agreed acceptance date, alternatively within one week of our notification of readiness for acceptance. The customer may not refuse acceptance if there is an insignificant defect. This also applies to partial deliveries.

If the goods are sent by us directly to a third party or abroad at the request of the customer, we can demand that acceptance, insofar as this is reasonable for the customer, take place in our works within a period of 7 working days after notification that the goods have been made available to the customer. If the customer does not make use of this option despite reasonableness, we will ship the goods. In this case, it is deemed to have been delivered in accordance with the contract and free of obvious defects.

The customer must inspect the goods immediately after delivery, insofar as this is feasible in the ordinary course of business, and if a defect is found, notify us immediately. If the customer fails to notify the goods, the goods are deemed to have been approved, unless there is a defect that was not apparent during the inspection.

If such a defect appears later, the notification must be made immediately after discovery; otherwise the goods shall be deemed to have been approved, even in view of this defect.

The warranty is provided in accordance with Section 7. If the customer fails to notify within the period, he can no longer assert claims for warranty and damages due to the defect itself or due to an error about the defectiveness of the item.

If the goods are accepted in our works, obvious shortfalls or incorrect deliveries and obvious defects must be reported and recorded in a joint record.

If the customer is in default of acceptance or culpably violates other obligations to cooperate, we are entitled to withdraw from the contract and/or to demand compensation for the resulting damage, including additional expenses (e.g. storage costs). For this we charge a flat-rate compensation of 0.5% for each completed week of delay, starting with the delivery period or – in the absence of a delivery period – with the notification that the goods are ready for dispatch, but no more than 5% of the order total. Both contracting parties reserve the right to prove a higher or lower damage. These provisions also apply if the purchaser does not accept partial deliveries within the relevant deadlines in the case of a call-off order.

7. Warranty

7.1 The customer must notify us in writing of any obvious defects within two weeks of delivery. If the customer is an entrepreneur, the notification must be made within three days.

The timely dispatch of the notification is sufficient to meet the deadline.

If the customer is an entrepreneur, the inspection and notification obligations owed by him in accordance with Section 377 of the German Commercial Code (HGB) remain unaffected.

The customer must describe the defects in a comprehensible manner.

7.2 In the event of defects, we will first remedy the defect or provide a replacement delivery, at our discretion. If the supplementary performance fails, the customer can reduce the price under the legal requirements or withdraw from the contract.

Further or other claims of the customer due to a defect are excluded. Claims for damages are also excluded; this does not apply in the event of intent or gross negligence or in the event of culpable injury to life, limb, health or a material obligation, the fulfillment of which characterizes the contract and the observance of which the customer may rely on.

7.3 Defective deliveries will be repaired or newly delivered at our discretion.

We are entitled to make the supplementary performance owed dependent on the customer paying the purchase price due. However, the customer is entitled to retain a part of the purchase price that is reasonable in relation to the defect.

If the defect is based on a defective third-party product, we are entitled to assign our warranty claims against our sub-supplier to the customer. In this case, a warranty claim can only be made against us if the judicial enforcement of the above-mentioned claims against the supplier or manufacturer of the defective third-party product was unsuccessful or is hopeless, for example due to insolvency.

Our warranty does not apply to defects that are based on the fact that the goods delivered by us have been improperly or unsuitably modified or repaired by the customer or third parties without our consent, which makes it impossible or unreasonably difficult to remedy the defect. The warranty exclusion also applies to damage caused by the use of components that we have not tested and approved.

Goodwill services are provided without acknowledgment of a legal obligation and do not justify any warranty claims.

If a complaint by the customer proves to be unjustified, the customer shall bear the costs incurred by us, unless the customer, after careful examination, was unable to identify that the complaint was unjustified.

7.4 We are liable in accordance with the statutory provisions for any breach of essential contractual obligations for which we are responsible, i.e. contractual obligations whose fulfillment characterizes the contract and which make its proper execution possible in the first place. We are only liable for all other breaches of duty if damage was caused intentionally or through gross negligence by one of our legal representatives, an employee or another vicarious agent.

Insofar as we are not responsible for intentional conduct, we are only liable for the typically occurring, foreseeable damage.

Liability under the Product Liability Act remains unaffected; this also applies to liability for culpable injury to life, limb or health. If a guarantee is assumed, we are liable in accordance with the statutory provisions.

Unless otherwise agreed above, claims for damages against us resulting from breaches of duty are excluded.

Insofar as our liability is excluded and limited, this also applies to the personal liability of our legal representatives, employees and other vicarious agents.

Claims for damages become time-barred within 12 months. It begins upon delivery or, if acceptance is required, upon acceptance.

In the case of repairs, the limitation period of 12 months for the repaired parts begins from handover of the repaired item, provided that we were obliged to repair it.

A claim for damages due to breach of the obligation to subsequent performance, according to § 437 No. 1, § 439 BGB, only exists if, during the 12-month limitation period, both the customer demands subsequent performance and we have violated our obligation to provide subsequent performance.

8. Intellectual property rights and copyrights

8.1 If a third party raises legitimate claims against the customer due to the infringement of industrial property rights and/or copyrights (hereinafter: industrial property rights) through deliveries made by us and used according to the contract, we shall be liable towards the customer within the limits set out in clause 7.4 sentences 1 and 2 specific deadline as follows:

At our discretion and at our expense, we will either obtain a right of use for the deliveries in question, change them in such a way that the property right is not violated, or exchange them.

If this is not possible for us or not possible under reasonable conditions, the customer can reduce the price under the statutory conditions or withdraw from the contract.

8.2 The above-mentioned obligations only exist if the customer notifies us in writing of the claims asserted by third parties within the period specified in Section 7.1.

8.3 Claims by the customer are excluded if he is responsible for the infringement of property rights.

8.4 Further or other claims by the customer due to claims raised by a third party against the customer due to the infringement of property rights through deliveries made by us are excluded.

Claims for damages by the customer are also excluded, unless they are based on intent or gross negligence, culpable injury to life, limb, health or an essential obligation, i.e. an obligation whose fulfilment gives the contract its character and whose compliance the customer can trust, supported; for the rest, the statutory statute of limitations shall apply to claims for damages justified in this way.

8.5 Software

8.5.1 Insofar as software is included in the scope of delivery, the purchaser is granted a non-exclusive and non-transferrable unlimited right to use the software supplied, including its documentation, to the extent appropriate for the purpose of the contract. It is made available for use with the delivery item intended for this purpose. The customer undertakes not to remove or change manufacturer information, copyright notices, serial numbers or other features that serve to identify the software. All other rights to the software and the documentation including the copies remain with us.

8.5.2 We guarantee that the software can be operated in accordance with the specifications in the documentation (product description and operating instructions) for a period of 12 months (section 9.7) from the delivery date.

8.5.3 A guarantee for common software errors that do not or only insignificantly affect the usability of the software is not accepted.

8.5.4 The customer must take suitable measures to ensure that damage does not occur or is kept within limits. The customer is responsible for the type and scope of the data backups. Insofar as we are not liable according to Section 9, our liability in the event of data loss due to a culpable violation of essential contractual obligations by us is limited to the typical recovery effort that would also have occurred if the customer had regularly backed up data in a manner appropriate to the risk.

8.5.5 If other programs (e.g. programs that are generally available free of charge) or data are supplied with the software, the copyrights for which lie with third parties, the customer must observe the terms of use for these programs or data.

8.5.6 The above conditions also apply to cases in which the customer obtains our planning or design software as an Internet download.

8.5.7 Liability in accordance with clause 9 (liability, statute of limitations) remains unaffected.

8.6 Intellectual Property

Insofar as the design of our products is protected by protectable, registered or unregistered rights, the depiction of the devices in catalogues, brochures, Helios software programs, images, drawings, sketches sent, on the Internet, on data carriers and other documents are our intellectual property. None of the aforementioned and other documents made accessible in business transactions may be used for any other purpose, in particular for advertising purposes, or duplicated and/or made accessible to third parties without our written consent. They are to be returned immediately upon request. Any copies made are to be destroyed if they are no longer required by the customer in the ordinary course of business or if negotiations do not lead to the conclusion of a contract. An exception to this is the storage of data made available electronically for the purpose of standard data backup.

9. Liability, Limitation of Liability and Disclaimer

9.1 Otherwise, claims for damages and reimbursement of expenses by the customer are excluded, regardless of the legal reason, in particular due to the breach of obligations arising from the contractual relationship and tort.

9.2 This does not apply in the event of intent or gross negligence or culpable injury to life, limb, health or a material obligation, the fulfillment of which characterizes the contract and on the observance of which the customer may rely or where liability is mandatory for other reasons .

10. Retention of Title

10.1 The delivery items (reserved goods) remain our property until all of our claims against the customer arising from the contractual relationship have been settled. For the duration of the retention of title, the customer is obliged to treat the delivered item with care and to keep it in proper condition.

10.2 If the customer behaves in breach of contract, we are entitled to withdraw from the contract and to take back the delivered item after a reasonable deadline set for the customer has expired without result; the statutory provisions on the dispensability of setting a deadline remain unaffected. The customer is obliged to surrender.

After taking back the delivered item, we are authorized to sell it; the proceeds of the sale are to be offset against the customer's liability - less the costs of the sale.

10.3 During the existence of the retention of title, the customer is prohibited from disposals - including in the form of pledging or assignment as security.

Resale is only permitted to an entrepreneur in the ordinary course of business and only under the condition that all claims arising from the resale against his customers or third parties are already assigned to us in the amount of the final invoice amount (including VAT) of our claim - regardless of whether the delivered item was resold without or after processing.

10.4 The processing or transformation of the delivered item by the customer is always carried out for us.

If the delivered item is processed with other items that do not belong to us, we acquire co-ownership of the new item in relation to the value of the delivered item (final invoice amount, including VAT) to the other processed items at the time of processing.

For the rest, the same applies to the item resulting from the processing as to the goods delivered under reservation.

10.5 If the delivered item is inseparably connected or mixed with other items that do not belong to us, we acquire co-ownership of the new item in relation to the value of the delivered item (final invoice amount, including VAT) to the other items at the time of connection or mixing.

If the connection or mixing takes place in such a way that the customer's item is to be regarded as the main item, it is agreed that the customer transfers proportionate co-ownership to us.

The customer keeps the resulting sole or joint ownership for us.

10.6 In the event of attachments, confiscations or other dispositions or interventions by third parties, the customer must inform the third party of our security rights and inform us immediately.

10.7 If the value of all security rights to which we are entitled against the customer exceeds the amount of all secured claims by more than 10%, we will release a corresponding part of the security rights at the customer's request.

11. Confidentiality

All information that is not generally known or obvious and that becomes known to the customer through the business relationship with us is to be regarded as our trade and business secrets. As such, they are to be treated confidentially.

12. Applicable law, place of jurisdiction and place of performance

12.1 The law of the Federal Republic of Germany applies exclusively; the validity of the UN sales law is expressly excluded.

12.2 If the customer is a merchant, the exclusive place of jurisdiction is our company headquarters in Troisdorf; however, we are entitled to sue the customer at his (residential) place of jurisdiction.

12.3 Unless otherwise agreed, our place of business in Troisdorf is the place of performance.

13. Binding nature of the contract

In the event of the ineffectiveness of individual provisions, the other provisions remain effective. Insofar as individual provisions are ineffective, the content of the contract is based on the statutory provisions.

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