

General Terms of Business of Wilhelm Modersohn Verankerungstechnik GmbH & Co KG

Preliminary remarks

In deviation from and supplementary to the statutory regulations, the Terms of Delivery and Payment set out below / overleaf shall form the basis of delivery and performance contracts concluded with the company Wilhelm Modersohn Verankerungstechnik GmbH & Co KG, Spenge – hereinafter referred to as Modersohn.

The Customer's divergent terms shall only be binding for Modersohn if explicitly confirmed by us in writing.

1. Conclusion of contract

The contract for delivery and performance shall only become valid when the order is confirmed by Modersohn in writing.

2. Prices

- (1) Prices shall only become binding when the order is confirmed by Modersohn in writing and subject to the proviso that the order data underlying the letter confirming the order remain unchanged. Unless specified otherwise, the prices quoted by Modersohn shall apply ex works, in euros, plus value-added tax at the statutory rate applicable at the time of delivery.
- (2) Packaging, postage, insurance and other shipping costs are not included and shall be invoiced additionally.
- (3) Any changes in the subject of the work and services requested by the Customer following confirmation of the order shall be charged to the Customer.
- (4) Engineering drawings, tools, samples and similar preparations requested by the Customer shall be invoiced even if the order is not placed. In this respect, the present Terms of Business shall apply even before placement of an order.

3. Delivery quantity, delivery period

- (1) Excess or short deliveries up to 10% of the ordered quantity shall be permissible if attributable to production reasons.
- (2) Modersohn shall be entitled to make part-deliveries.
- (3) The delivery times quoted by Modersohn shall apply to the date of shipment of the goods. Delivery shall be deemed to be punctual if the goods leave the works at this time or the Customer is informed that they are ready for delivery.
- (4) The agreed delivery period shall always apply as from clarification of all technical and commercial details. Delivery periods shall therefore be without obligation as a matter of principle. Delivery dates shall only be binding if the Customer receives written confirmation of the binding delivery date.
- (5) If action by the Customer is required for production of the work or for execution of the delivery, the delivery period shall only commence upon complete performance of such action by the Customer.
- (6) If the delivery period is exceeded, the Customer shall grant a reasonable period of grace which, however, shall not extend beyond three weeks.
- (7) If the delivery period including the reasonable period of grace is exceeded, Modersohn shall exclusively be liable for the invoiced value of the goods not delivered on schedule, but for not more than the value of the negative interest.
- (8) In the event of Acts of God, operational disturbances and similar unforeseeable circumstances for which Modersohn is not responsible, Modersohn shall be relieved of its obligation to comply with the agreed delivery periods for the duration of the operational disturbance. In particular, the Customer shall not be entitled to withdraw from the contract and/or claim damages in such cases.

4. Warranty

- (1) The warranty period shall equal two years for newly manufactured goods and one year for used, overhauled goods.

The warranty period shall equal one year if the Customer is a business enterprise, legal entity under public law or a special trust under public law.

- (2) The Customer shall examine the goods for absence of defects immediately upon delivery. Evident defects shall immediately be reported in writing. If evident defects are not reported or are not reported in good time or in correct form, all warranty rights shall be extinguished with regard to these.
- (3) Other defects shall be reported to Modersohn within one week of discovery.
- (4) Modersohn shall only be liable for promotional claims or defects in the instructions for use if the Customer is a consumer.
- (5) Minor defects not significantly affecting either the value or the suitability or usefulness of the work shall be excluded from the warranty.
- (6) Modersohn shall be entitled to effect additional performance at its discretion. In other words, Modersohn shall decide whether to repair the defect or make a new delivery.

If the additional performance proves fruitless, Modersohn shall be entitled to repeat the additional performance. In this case too, Modersohn shall decide whether additional performance is to be effected through renewed delivery or repair of the defect.

- (7) The Customer shall only be entitled to withdraw from the contract and/or claim damages if the additional performance has repeatedly proved fruitless. The Customer shall only be entitled to claim damages if Modersohn is guilty of gross negligence or wilful intent. The amount of damages shall in all cases be limited to the negative interest. Damages for subsequent losses due to defects shall be excluded unless based on wilful intent.

5. Breach of duty

- (1) Modersohn's liability for breach of duty shall be limited to violations attributable to gross negligence or wilful intent.
- (2) As a matter of principle, Modersohn shall not be liable for breach of duty resulting from the improvement, processing or conversion of goods based on drawings or artwork which have been checked by the Customer or on samples approved by the Customer as bases for production. Modersohn shall not be liable for the engineering design and correct nature of reproduced masters.
However, Modersohn shall be obliged to draw the Customer's attention to the impossibility of technical implementation of the masters as soon as possible, insofar as such impossibility is recognizable.
- (3) Liability for violation of third-party industrial property rights shall be excluded in particular when improving, processing or converting goods in accordance with the Customer's specifications. Modersohn shall not be obliged to establish the existence of third-party industrial property rights.
- (4) Personal liability of Modersohn's statutory representatives, vicarious agents and employees shall be excluded in the event of losses attributable to minor negligence on their part.

6. Unlimited liability for death, physical injury and damage to health

Insofar as the present Terms of Business limit Modersohn's liability in relation to statutory regulations, such limitation shall not apply in cases of death, physical injury and damage to health.

7. Terms of payment

- (1) All invoices issued by Modersohn shall be due for payment immediately and without deductions, unless agreed otherwise.
- (2) If payment deadlines are exceeded, Modersohn shall be entitled to demand interest on the defaulted sum at a rate of 5% above the basic interest rate in accordance with Section 247 of the German Civil Code (BGB) and, if the Customer is not a consumer, at a rate of 8% above the basic interest rate, unless a higher loss due to the defaulted payment can be proved at any time.
- (3) Bills of exchange shall not be accepted; cheques shall only be accepted in lieu of performance and subject to collection.
- (4) If the Customer defaults on a payment, Modersohn shall be free to refuse further performance of the contract.
If the outstanding payment is seriously jeopardized, Modersohn shall be entitled to demand payment in advance or adequate security.
If the Customer refuses to provide payment in advance or security, Modersohn may withdraw from the contract and claim damages.
- (5) Notwithstanding divergent clauses in the Customer's Terms, payments received shall first cover the costs, then the interest and finally the principal claim, starting with the oldest claim if there are several.

8. Reservation of title

- (1) The delivered goods shall remain the property of Modersohn until all claims outstanding against the Customer on the invoice date have been fully paid.
- (2) If the reserved goods are processed, improved or converted, Modersohn shall have (co-)ownership of the resultant article equal to the value of the reserved goods prior to processing, improvement or conversion.

Sale of the reserved goods shall only be permitted within the framework of the Customer's ordinary business. If the goods are resold by the Customer, he shall assign his claim against the purchaser to Modersohn at the time of resale. The Customer shall oblige the purchaser to effect payment directly to Modersohn within the framework of the payment obligation resulting from the resale. Exceptions to this provision shall only be possible by prior written agreement between Modersohn and the Customer.

- (3) All other dispositions involving the reserved goods shall be invalid, particularly pledging or transfer by way of security.
- (4) If execution is levied against the Customer's property and if the reserved goods are affected, Modersohn shall be duly notified in writing and without delay, with indication of all the requisite data (authority enforcing execution, reference numbers) and enclosing execution records if applicable.
- (5) Articles placed at the Customer's disposal by Modersohn and not forming an integral part of the goods or performance as such (e.g. drafts, engineering drawings, tools, etc.) shall remain the property of Modersohn.

9. Place of performance and jurisdiction

- (1) Place of performance shall be at the seat of Modersohn's branch.
- (2) If the Customer is a business enterprise, a legal entity under public law or a special trust under public law, place of jurisdiction shall be at the seat of Modersohn's branch.

10. Concluding provisions

The invalid nature of individual provisions shall not affect the validity of the remaining provisions. The invalid provision shall be deemed to have been replaced by an economically equivalent ruling.

All declarations concerning the validity of the contractual relationship shall only be valid if set out in writing. Any amendment of the present requirement for written form shall similarly only be valid if set out in writing.

Wilhelm Modersohn GmbH & Co. KG

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