

**GENERAL TERMS AND CONDITIONS
OF SALE
of FLUX-GERÄTE GMBH**

§ 1 General, scope

- (1) All supplies and services FLUX-GERÄTE GMBH are made exclusively at the following delivery and payment conditions (hereinafter also referred to as “terms of sale”). Terms and conditions of the customer that contradict or diverge from our terms of sale are herewith expressly excluded. FLUX-GERÄTE GMBH is only bound by such terms and conditions if FLUX-GERÄTE GMBH has acknowledged them in writing. Our terms of sale still apply even if we carry out the delivery to the customer without any reservation in the knowledge that the terms and conditions of the customer contradict or diverge from our terms of sale.
- (2) In placing the order and accepting the goods delivered by us, the customer confirms its agreement with our terms and conditions. The storage and processing of the data of our customers is computerized to the extent that this is necessary for the due processing of the business relationship.
- (3) All arrangements made between the customer and ourselves for the purpose of executing an agreement are set forth in said agreement.
- (4) Our terms of sale only apply to companies as defined by Article 310 (1) BGB [Bürgerliches Gesetzbuch: German Civil Code].

§ 2 Offers and deliveries

- (1) Our offers are generally valid for a limited period of time. If the order of the customer qualifies as an offer in accordance with Article 145 BGB, we can accept it within two weeks. The order is accepted by the order confirmation of FLUX-GERÄTE GMBH which forms the basis of the contractual agreement and determines the scope of the delivery.
- (2) In the case of offers which are limited in time and which allow a certain period of time for acceptance, the offer is decisive if no order confirmation is issued within the period allowed. Side agreements and amendments must be confirmed by us in writing.
- (3) We reserve the right to make design changes and other changes to technical data and specifications to the extent that these represent technical improvements and are deemed to be reasonably acceptable for the customer.
- (4) Documents such as drawings, samples and the like provided to FLUX-GERÄTE GMBH as attachments to the request for an offer or the order remain the property of the customer. They form the binding basis for the preparation and elaboration of the offer by FLUX-GERÄTE GMBH. When placing orders, the customer must make written reference to any subsequent changes compared to the initial request for an offer and the offer by FLUX-GERÄTE GMBH. If FLUX-GERÄTE GMBH attaches similar

documents to its offers in the way described above, these are and remain the property of FLUX-GERÄTE GMBH. The customer agrees not to use these documents for purposes not governed by the agreement, to duplicate them or to otherwise make them accessible to third parties. Obvious errors, printing, arithmetical, typing and calculation errors are not binding for FLUX-GERÄTE GMBH and do not entitle the customer to claim damages or compensation.

§ 3 Prices and payment

- (1) Unless otherwise agreed in the order confirmation, the prices are ex works "Maulbronn", excluding costs of shipping and packaging; these will be invoiced separately.
- (2) The delivery is made at the price stated in the offer of FLUX-GERÄTE GMBH or in the order confirmation in accordance with § 2 above.
- (3) The invoice amount is due within 14 days of the invoice date with 2% discount, or net within 30 days. Invoices for repairs are due immediately for payment, without deductions. The 2% discount is not granted if other receivables are overdue. If payment periods are exceeded, we reserve the right to claim damages for delayed payment of 8% above the base interest rate. For orders for goods with a net value of less than EUR 25, we charge a minimum quantity surcharge up to this net value.
- (4) Payments can only be withheld or offset against any counterclaims if the counterclaims of the customer are undisputed, acknowledged and legally enforceable.

§ 4 Delivery period, delivery not possible, delays

- (1) The delivery period begins as of the date of the order confirmation. However, this only applies if all the technical details have been clarified at this point in time.
- (2) Compliance with our delivery obligation also presupposes that the customer satisfies its obligations punctually and properly. We reserve the right to make a plea of non-performance.

The delivery period is as agreed between the contractual parties. For FLUX-GERÄTE GMBH to keep the delivery date, all commercial and technical questions must have been clarified between the contractual parties and the customer must have fulfilled all its responsibilities, e.g. such as providing the necessary official certifications or permits or payment of a down-payment. If this is not the case, the delivery period is prolonged accordingly. This does not apply if FLUX-GERÄTE GMBH is responsible for the delay.

- (3) Keeping the delivery period is also subject to the condition that FLUX-GERÄTE GMBH receives its own deliveries on time. FLUX-GERÄTE GMBH will immediately announce any indication of possible delays.
- (4) The delivery period is deemed to have been kept if the item being delivered has left the plant of FLUX-GERÄTE GMBH in Maulbronn before the end of the delivery period or

the customer has been notified that the item is ready for shipment. If the products have to be inspected and accepted, the inspection date is decisive, unless there are reasonable grounds to reject acceptance; alternatively, notification that the products are ready for inspection is deemed to be decisive.

- (5) If the shipment or inspection of the products being delivered is delayed for reasons caused by the customer, the costs caused by the delay will be charged to the customer starting one month after notification that the products are ready for shipment or inspection.
- (6) If the failure to keep the delivery period is due to force majeure, labor disputes or other events which are beyond the control of FLUX-GERÄTE GMBH, the delivery period is extended accordingly. FLUX-GERÄTE GMBH will inform the customer about the beginning and end of such events as soon as reasonably possible.
- (7) The customer can withdraw from the contract without notice if circumstances render performance impossible for FLUX-GERÄTE GMBH before the transfer of risk. The customer can also withdraw from the contract if execution of part of a delivery is impossible and the customer has a legitimate interest in rejecting partial delivery. If this is not the case, the customer must pay that part of the contractually agreed price that relates to the partial delivery. The same applies if FLUX-GERÄTE GMBH is unable to execute the contract. §§ 7-9 apply by analogy.
- (8) If the customer is in default of acceptance or if it violates any other duty to cooperate, we are entitled to claim compensation for any loss that we have sustained as a result, including any additional expenses that have been incurred. Further claims and rights are reserved.
- (9) Provided the prerequisites of (4) are in place, the risk of accidental loss or the accidental deterioration of the purchased goods is transferred to the customer at the point in time when the customer is in default of acceptance or payment.
- (10) We are liable in accordance with the legal provisions to the extent that the underlying purchase agreement contains a fixed date of delivery in accordance with Article 286 (2) No. 4 BGB or Section 376 HGB [Handelsgesetzbuch: German Commercial Code]. We are also liable in accordance with the legal provisions if the customer is entitled on account of a delay in delivery for which we are responsible to claim that its interest in executing the contract has lapsed.
- (11) We are also liable in accordance with the legal provisions if the delay in delivery is due to the willful or gross negligent breach of contract by us; if our representatives or agents are responsible, the liability lies with us. If the delay in delivery is due to a gross negligent breach of contract by us, our liability for damages is limited to foreseeable losses that typically occur in such cases.
- (12) We are also liable in accordance with the legal provisions if the delay in delivery for which we are responsible is due to the culpable infringement of a significant contractual duty; in this case, our liability for damages is limited to foreseeable losses that typically occur.
- (13) In the case of a delay in delivery, we are liable for every full week of delay in the form of a lump-sum compensation for delay equivalent to 0.5% of the value of the goods

being delivered per week, but not more than 10% of the total value of the goods being delivered. If FLUX-GERÄTE GMBH is in default with the delivery, the customer is entitled to grant FLUX-GERÄTE GMBH by written declaration an additional period for delivery of at least another four weeks, beginning from the receipt of the written declaration. If this additional term expires without success, the customer is entitled to withdraw from the contract.

- (14) This does not affect other legal claims and rights of the customer.

§ 5 Transfer of risk

- (1) The risk is transferred to the customer when the goods being delivered leave the plant, even if part deliveries have been made or FLUX-GERÄTE GMBH has agreed to provide other services, e.g. shipping costs or delivery and installation. Where an inspection is necessary, this is decisive for the transfer of risk. It must be carried out immediately as of the inspection date, alternatively after FLUX-GERÄTE GMBH notifies the customer that the goods are ready for inspection. The customer may only refuse to accept the goods after inspection if there is a significant defect.
- (2) If shipment or inspection is delayed or does not take place due to circumstances that are beyond the control of FLUX-GERÄTE GMBH, the risk is transferred to the customer from the day on which the customer is notified that the goods are ready for shipping or inspection. FLUX-GERÄTE GMBH agrees at the expense of the customer to take out any insurance the customer may demand.
- (3) Partial deliveries are permissible to the extent that the deliveries can be split and partial deliveries are deemed to be reasonably acceptable for the customer.
- (4) At the customer's request, we will take out transport insurance to cover the delivery; any costs incurred for this are borne by the customer.

§ 6 Retention of title

- (1) The delivered goods remain our property until all current and future receivables from the business relationship with the customer have been paid, regardless of the legal grounds.

If the customer contravenes the contractual arrangements, including but not limited to default of payment, we are entitled to take back the goods that have been delivered. An application for the opening of insolvency protection proceedings entitles FLUX-GERÄTE GMBH to withdraw from the contract and to demand that the delivered goods be returned immediately. The repossession of the purchased goods by FLUX-GERÄTE GMBH constitutes a withdrawal from the contract. After repossessing the purchased goods, FLUX-GERÄTE GMBH is authorized to sell the goods, the proceeds of which are to be offset against the liabilities of customer, less reasonable selling costs.

- (2) In the event of attachments or other interventions of third parties, the customer must inform us immediately in writing so that we can institute proceedings in accordance

with Section 771 ZPO [Zivilprozessordnung: German Code of Civil Procedure). If the third party is not able to reimburse the costs of litigation incurred in and out of court, the customer is liable for any losses we may incur.

- (3) The customer is authorized to resell the delivered goods in the course of ordinary business, but on a revocable basis. The customer assigns to us all receivables up to the final invoice amount (including value added tax) of our receivable which are due to the customer from the resale from its customers or third parties, regardless of whether the purchased item is resold without or after processing. The assigned receivables act as security for all claims in accordance with paragraph 1 above. At our request, the customer is obliged to inform us of the assignment to third parties for the purpose of payment to us and to provide us with the necessary information and documents that we need to enforce our rights.
- (4) The customer may neither sell the delivered goods, pledge them or offer them as collateral. In the event of attachments or confiscation or other orders by third parties, the customer must inform FLUX-GERÄTE GMBH immediately.

§ 7 Warranty claims

- (1) The warranty claims of the customer require that its statutory obligations in accordance with Section 377 HGB to examine the goods and to give notice of defects have been duly fulfilled.
- (2) If the purchased item exhibits a defect, the customer is entitled to supplementary performance and can choose between remedying the defect or the supply of a new, defect-free item. In the event of a remedy of the defect or a new delivery, we are obliged to bear all expenses involved in the supplementary performance, including but not limited to transport and travel expenses, labor and material costs, provided these are not increased by the circumstance that the purchased item has been relocated to a place other than the place of performance.
- (3) If the supplementary performance fails, the customer can demand either withdrawal from the contract or a price reduction.

§ 8 Liability

- (1) We are liable in accordance with the legal provisions if the customer claims damages due to the willful or gross negligent breach of contract by us or our representatives or agents. Unless we are accused of a willful breach of contract, our liability for damages is limited to foreseeable losses that typically occur in such cases.
- (2) We are also liable in accordance with the legal provisions if we culpably infringe a cardinal obligation; in this case, our liability for damages is, however, again limited to foreseeable losses that typically occur. A contractual duty is deemed to be a cardinal obligation if the breach of duty relates to a duty which the customer relied on to be performed and was justified in relying thereon.

- (3) To the extent that the customer is entitled to damages instead of the performance, our liability – also in the context of § 7 (3) – is limited to foreseeable losses that typically occur.
- (4) If the delivered goods cannot be used in accordance with the contract through the fault of FLUX-GERÄTE GMBH as a result of suggestions and advice given before or after the contract was concluded not being implemented or being wrongly implemented or through the infringement of other contractually agreed secondary obligations – including but not limited to instructions for the operation and maintenance of the delivered goods – the rulings of §§ 8 et seq. apply by analogy, excluding further claims of the customer.
- (5) We assume no liability for damage caused for the following reasons: unsuitable or incorrect use or storage, incorrect assembly/installation by the customer or third party, unauthorized repair attempts and modifications, natural wear and tear, faulty or careless handling, etc. on which we have no influence, as well as in the case of improper usage and non-compliance with our instructions for use.
- (6) In the absence of any provisions to the contrary above, liability shall be excluded.
- (7) Warranty claims become statute barred after 12 months, beginning upon transfer of risk.
- (8) In the event of a delivery recourse in accordance with Articles 478, 479 BGB, the statute of limitations remains unaffected; it is five years from the delivery of the deficient goods.

§ 9 Joint liability

- (1) Liability for compensation for damages which goes beyond that envisaged under § 8 is excluded, regardless of the nature of the claim being asserted. This applies in particular to claims for damages arising from faults upon conclusion of contract, on account of other breaches of duty or on account of tort claims to compensation for property damages according to Article 823 BGB.
- (2) The limitation as described under paragraph (1) above also applies if the customer demands reimbursement of needless expense instead of making a claim for compensation.
- (3) If liability for compensation for damages against us is excluded or limited, this shall also apply with respect to the personal liability for damages of our employees, workers, co-workers, representatives, and agents.

§ 10 Secrecy

The customer is required to treat all information, know-how and other business secrets obtained in connection with the execution of each contract with strict confidentiality and is not permitted without the express approval of FLUX-GERÄTE GMBH to pass on any information, documents, documentation, drawings, sketches or other materials to third parties or otherwise to make such materials accessible. FLUX-GERÄTE GMBH also treats the documents of customers confidentially.

§ 11 Court of competent jurisdiction - place of performance

- (1) For commercial customers, our registered office is the court of competent jurisdiction; we are, however, also entitled to sue the customer at the court competent for its place of domicile.
- (2) The law of the Federal Republic of German applies; application of the United Nations Convention on Contracts for the International Sale of Goods (UN Purchasing Convention) is excluded.
- (3) Unless otherwise stipulated in the order confirmation, our registered office is the place of performance.