

# STANDARD TERMS OF BUSINESS OF FRIEDRICH W. LÖBBE GMBH - Stand Januar 2020

## APPLICABILITY

1. All supplies, services and quotations provided by Friedrich W. Löbbe GmbH, Max-Planck-Str. 6, 52249 Eschweiler (hereinafter also referred to as the "**Supplier**") are exclusively based on these Standard Terms of Business. These form part of all contracts which the Supplier concludes with its co-contracting parties (hereinafter also referred to as "Orderer's ") relating to the supplies or services provided by it. They also apply to any future supplies, services or quotations provided to the Orderer, even if they have not been separately agreed again.
2. The terms of business of the Orderer or a third party do not apply, even if the Supplier does not specifically reject their applicability in a specific case. Even if the Supplier refers or makes reference to a written document which contains the terms of business of the Orderer or a third party, this does not constitute any agreement to the applicability of those terms of business.
3. In these Standard Terms of Business the terms listed below have the following meanings:
  - "**Place of manufacture**": The Supplier's headquarters or place of business where the object that is supplied is manufactured.
  - "**Written**": in the form of a written document which is signed by the parties, or by means of a letter, fax, or email.

## RESERVATION OF TITLE AND TRANSFER OF RISK

4. The place of performance for all obligations arising from the contractual relationship is Aachen, unless specifically otherwise agreed. In the absence of a special delivery clause in the contract, goods are supplied EXW "Ex Works" within the meaning of the version of the INCOTERMS® which applies when the contract is concluded. The risk is transferred to the Orderer no later than at the point in time when the object being supplied is handed over at the place of manufacture, either to the Orderer or the initial forwarding agent, carrier or other third party charged with shipping it. This is deemed to happen at the start of the loading process.
5. The object supplied remains the Supplier's property until full payment for it has been made. The Orderer must treat the goods with care, insure them appropriately, and maintain them as is necessary. The Orderer must provide full assistance to the Supplier in its efforts to protect its right of ownership in relation to the supplied object.

## LIABILITY FOR DEFECTS

6. According to Clauses 7 to 18, the Supplier is obliged to rectify all defects or anomalies (hereinafter referred to as "defects") which are attributable to an error in construction, the materials used, or the design.
7. The warranty is fulfilled through rectification or the replacement of defective parts, exclusively as the Supplier sees fit. Throughout the warranty period all the information relating to completed hours of operation, pump operation periods, and heating, cooling and current operation periods must be retained by the Orderer and provided to the specialist fitters and engineers at any time.
8. The Supplier is not liable for defects which are attributable to materials provided by the Orderer or construction details which are stipulated or specified in detail by the Orderer.
9. The objects supplied must be carefully examined without delay following delivery to the Orderer or the third party designated by it. They are deemed to be approved by the Orderer in relation to evident defects, or other defects which would have been identified during a careful examination undertaken without delay, if the Supplier does not receive a written complaint within seven working days following delivery. The complaint must describe the defect.

In respect of other defects, the objects supplied are deemed to be approved by the Orderer if the complaint is not received by the Supplier within seven working days following the time at which the defect became evident; however, if the defect could already be identified by the Orderer in the course of normal use at an earlier point in time, the period allowed for making a complaint starts to run as from this earlier point in time.

If no complaint is made about the defect within the periods stated above, the Orderer loses its warranty rights in respect of defects.

10. The Supplier's liability is restricted to defects which arise within one year after the delivery, or after inspection and acceptance if this is required. If the use of the object supplied exceeds the agreed scope of use, the period is appropriately reduced.
11. If the defect may cause loss or damage, the Orderer must without delay inform the Supplier of this in writing. The Orderer is liable for any loss of or damage to the object supplied which results from its failure to provide this information. The Orderer must take the appropriate measures for limiting the loss or damage and follow the Supplier's instructions in this regard.
12. If the Supplier demands this, any object supplied that is the subject of a complaint must be sent back to the Supplier free of charge. This does not apply in the case that the supplied object is at a other location than the contractual place of delivery (if the cost will increase);  
If the defect can be rectified through the replacement or repair of a defective part and if the removal and installation of the part does not require any particular specialist knowledge, the Supplier's obligation in respect of the defect ends when the properly repaired or replaced part is delivered to the Orderer.  
The Orderer must at its own expense provide the Supplier with access to the object supplied and undertake any action in relation to the items of equipment which do not form part of the scope of supply that is necessary for rectifying the defect.
13. In the absence of any agreement to the contrary, the Orderer must pay for any additional costs which the Supplier incurs for rectifying the defect due to the fact that the object supplied is situated at a different location from the destination for delivery from the Supplier to the Orderer that was stated in the contract when the contract was concluded, or from the delivery location if no delivery destination was stated.
14. Replaced defective parts must be provided to the Supplier and they become its property.
15. If the Orderer has complained about the defect and if no defect can be identified for which the Supplier is liable, the Orderer must reimburse to the Supplier the costs which arise from such a complaint.
16. If other manufacturers' components are defective and the Supplier cannot remove them due to licensing or other factual reasons, the Supplier will either choose to make its warranty claims against the manufacturers and suppliers on behalf of the Orderer, or assign these claims to the Orderer. In the case of such defects, warranty claims against the Supplier are subject to the other conditions and terms of these Standard Terms of Business and exist only if the attempt to legally enforce the aforementioned claims against the manufacturer or supplier has failed, or if, for example due to an insolvency, it has no prospect of success. Throughout the duration of any legal dispute the statutory limitation period applying to the Orderer's relevant warranty rights against the Supplier ceases to run.
17. Any supplying of second-hand objects that may be agreed with the Supplier in a specific case excludes any warranty in respect of quality and fitness for purpose.
18. Notwithstanding the provisions of Clauses 6 to 16, the Supplier's liability for defects in any part of the object supplied is limited to one year after the end of the liability period stated in Clause 10, or one year after the end of any other liability period agreed between the parties.

## **FAULT-BASED LIABILITY FOR COMPENSATION**

19. The Supplier's liability to provide compensation – regardless of the legal reason for it and in particular if it results from frustration of performance, default, defective or wrong delivery, breach of contract, breach of duties during contract negotiations, or tort – is restricted according to Clauses 20 to 25 if it is fault-based.
20. The Supplier is not liable in the case of the slight negligence of its bodies, legal representatives, employees or other servants except in the case of a breach of material contractual duties. Material contractual duties include the obligation to supply and install the object supplied on time, the absence of any defects in it which impair its operability or suitability for use in a more than an immaterial manner, as well as advice, protection and safeguarding duties which are intended to make it possible for the Orderer to use the object supplied as specified in the contract, or are intended to protect the physical well-being of the Orderer's employees, or to protect its property from serious damage.
21. If the Supplier is in principle liable to provide compensation according to Clause 20, this liability is limited to losses which the Supplier foresaw at the time when the contract was concluded as a potential consequence of a breach of duty, or which it ought to have foreseen by exercising due diligence. Furthermore, liability to pay compensation in respect of indirect losses and consequential losses which result from defects in the object supplied only exists if such losses must typically be expected in the event of the object supplied being used as intended.
22. In case of liability of the supplier for indirect and consequential damages the duty of replacement is regulated as follows under the supplier's business and product liability insurance:  
The supplier maintains a continuous business and product liability insurance with Allianz-Versicherung AG under contract no. HS-9213922187. In this insurance the benefits are agreed up to the following amounts: 10,000,000.00 € lump sum for personal injury, material damage and financial loss liability 1,000,000.00 € for activities damage, in each case 2 times the annual limit.  
The scope of services also extends to direct consequential damages of insured personal injury and property damage.
23. The above liability exclusions and limitations apply to the same extent in relation to the bodies, legal representatives, employees and other servants of the Supplier.
24. If the Supplier provides technical information or acts in an advisory capacity and such information or advice does not form part of the scope of services which is contractually agreed to be owed by it, this is done on an unpaid basis and excludes any liability.
25. The limitations stated in Clauses 19 to 24 do not apply to the Supplier's liability resulting from its deliberate conduct, or in respect of warranted characteristics, death, physical injury or health impairment, or to liability under the Product Liability Act

## **INDUSTRIAL PROPERTY RIGHTS**

26. In accordance with clauses 27 and 28, the Supplier warrants that the object supplied is free of third party commercial property rights or copyright. The Orderer will notify the Supplier in writing without delay if claims are made against it due to the infringement of such rights.
27. If the object supplied infringes a third party commercial property right or copyright and a legal defect therefore arises within the meaning of § 435 of the BGB [German Civil Code], the Supplier will, at its expense and by a method of its choosing, alter the object supplied or replace it so that third party rights are no longer infringed but the object supplied continues to fulfil the contractually agreed functions, or it will grant the usage right to the Orderer by concluding a licence agreement. If it fails to do this within a reasonable period, the Orderer is entitled to withdraw from the contract or to reduce the purchase price by an appropriate amount. Any compensation claims of the Orderer are subject to the limitations stated in Clauses 20 to 25.
28. In the event of legal infringements caused by other manufacturers' products which are supplied by the Supplier, the Supplier will choose to either make its warranty claims against the manufacturers and upstream suppliers on behalf of the Orderer, or to assign these claims to the Orderer. In these cases, claims against the Supplier exist according to Clauses 26 and 27 only if the attempt to legally enforce

the aforementioned claims against the manufacturer or supplier has failed, or if, for example due to an insolvency, it has no prospect of success.

## **PAYMENT TERMS**

29. In the absence of any contractual agreement, all the Supplier's invoices are payable without deduction within 14 days following the issuing of the invoice. If the Orderer is in arrears with its payments, the Supplier will charge arrears interest as from the payment due date as well as charging the reimbursement of its debt collection costs; the level of such charges will be the statutory bank interest rate and expenses for publicly available business loans, in each case 8% above the base rate of the German Federal Bank. The debt collection costs that are to be reimbursed are 1% of the amount in respect of which arrears interest was due.

## **CONCLUDING PROVISIONS**

30. If the Orderer is a businessman, a corporate body under public law, or a special fund under public law, or if it does not have any general place of jurisdiction in the Federal Republic of Germany, the place of jurisdiction for any disputes arising from the business relationship between the Supplier and the Orderer is either Aachen or the location of the Orderer's headquarters, whichever is chosen by the Supplier. However, Aachen is the exclusive place of jurisdiction for suits against the Supplier in such cases. Mandatory legal provisions regarding exclusive jurisdictions are unaffected by this provision.
31. This contract is subject to German law, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods dated 11<sup>th</sup> April 1980 - CISG).
32. No subsidiary agreements to this contract have been concluded. Amendments or additions to this agreement must be made in writing in order to be effective. The same applies to any waiver of the written form requirement.
33. If a provision of this contract – or a provision which is incorporated into it in future – should be wholly or partly legally ineffective or unimplementable, or if it later loses its legal effectiveness or implementability, this is not to affect the validity of the other provisions of the contract. The same applies if it becomes apparent that there is gap in the provisions of the contract. The place of the ineffective or unimplementable provisions shall be taken – or the gap shall be filled – by an appropriate provision the effects of which, insofar as is legally possible, approximate as closely as possible to what the parties to the contract intended, or what they would have intended according to the meaning and purpose of this contract if they had considered the point when concluding the contract or at the time when a provision was subsequently incorporated in it