

## **General Conditions for the supply of products and services of Mazurczak Elektrowärme GmbH**

– January 2008, Tab. 426 –  
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### **I. GENERAL**

1. The scope of deliveries and/or services (hereinafter referred to as "Supplies") shall be determined by the written declarations of both Parties. General terms and conditions of the Purchaser shall apply only if and when expressly accepted by Mazurczak Elektrowärme GmbH (hereinafter referred to simply as Mazurczak) in writing.
2. We herewith reserve any industrial property rights and/or copyrights pertaining to offers, drawings and other documents (hereinafter referred to as "Documents"). The Documents shall not be made accessible without the Supplier's prior consent and shall, upon request, be returned to us without undue delay if the contract is not awarded. Sentences 1 and 2 shall apply correspondingly to documents of the Purchaser; these may, however, be made accessible to third parties to which Mazurczak has rightfully transferred Supplies.
3. Partial deliveries shall be allowed, to the extent they are reasonable for the Purchaser.

### **II. Prices and Terms of Payment**

1. Prices shall be ex works and exclude packaging; value added tax shall be added at the then applicable rate.
2. Payments shall be directed cost-free to our bank account. Monetary claims are to be paid upon invoice with a 2% cash discount within 14 days or the net amount after 30 days, to the extent not otherwise agreed. The legal default interest rate shall be applied for default interest, according to §288 BGB.
3. The Purchaser may set off only those claims that are undisputed or against which no legal recourse is possible.

### **III. Retention of Title**

1. Items pertaining to the Supplies ("Retained Goods") shall remain our property until our each and every claim against the Purchaser on account of the business connection has been fulfilled.
2. For the duration of the retention of title, the Purchaser may not pledge the Retained Goods or use them as security, and resale shall be possible only for resellers in the ordinary course of their business and only on condition that the reseller receives payment from its customer or makes the transfer of property to the customer dependent upon the customer fulfilling its obligation to effect payment.
3. The Purchaser shall inform Mazurczak forthwith of any garnishment, seizure or other act of intervention by third parties.
4. Where the Purchaser fails to fulfil its duties, including failure to make payments due, Mazurczak shall be entitled to cancel the contract and take back the Retained Goods in the case of continued failure, following expiry of a reasonable time set by the Supplier; the statutory provisions that a time limit is not needed remain unaffected. The Purchaser shall be obliged to surrender the Retained Goods.

### **IV. Deadlines for Supplies; Delay**

1. Deadlines set for Supplies can only be met if all Documents to be supplied by the Purchaser, necessary permits and releases, especially concerning plans, are received in time and if agreed terms of payment and other obligations of the Purchaser are fulfilled. If these conditions are not fulfilled in time, deadlines shall be reasonably extended; this shall not apply where Mazurczak is responsible for the delay.
2. If non-compliance with the deadlines is due to force majeure such as mobilization, war, rebellion or similar events, e.g. strike or lockout, the deadlines shall be reasonably extended.
3. Purchaser's claims for damages due to delayed Supplies as well as claims for damages in lieu of performance are excluded. This shall not apply in cases of mandatory liability based on intent, gross negligence, or due to injury of life, body or health. Cancellation of the contract by the Purchaser based on statute shall be limited to cases where Mazurczak is responsible for the delay. The above provision does not imply a change in the burden of proof to the detriment of the Purchaser.
4. At the request of Mazurczak, the Purchaser shall declare within a reasonable period of time whether the Purchaser will cancel the contract due to the delayed Supplies or insist that the Supplies be carried out.

### **V. Transfer of the Risk**

1. Even where delivery has been agreed freight free, the risk shall pass to the Purchaser as follows: at the time when the Supplies are shipped or picked up by the carrier. Upon request of the Purchaser, Mazurczak shall insure the Supplies against the usual risks of transport at the expense of the Purchaser.
2. The risk shall pass to the Purchaser if dispatch or shipping is delayed for reasons for which the Purchaser is responsible or if the Purchaser has otherwise failed to accept the Supplies.

### **VI. Receipt of Supplies**

The Purchaser shall not refuse to receive Supplies on the basis of minor defects.

### **VII. Defects as to Quality**

Mazurczak shall be liable for defects as to quality ("Sachmängel", hereinafter referred to as "Defects",) over a period of 12 months from the time the Supplies are shipped or picked up by the carrier, as follows:

1. All parts or services where a Defect becomes apparent within the limitation period shall, at our discretion, be repaired, replaced or provided again free of charge, allowing for the hours of operation elapsed, provided that the reason for the Defect had already existed at the time when the risk passed.
2. Claims based on Defects are subject to a limitation period of 12 months. This provision shall not apply in cases of injury of life, body or health, or in the event of an intentional or grossly negligent failure to fulfil our obligation or fraudulent concealment of a Defect. The legal provisions regarding suspension of expiration ("Ablaufhemmung"), suspension ("Hemmung") and recommencement of limitation periods remain unaffected.



3. The Purchaser shall immediately report Defects to Mazurczak in writing.
4. In the case of notification of a Defect, the Purchaser may withhold payments to an extent which has a reasonable relationship to the Defect occurred. The Purchaser, however, may withhold payments only if the subject-matter of the notification of the Defect occurred is justified beyond doubt. Unjustified notifications of Defect shall entitle Mazurczak to have expenses incurred reimbursed by the Purchaser.
5. Mazurczak shall first be given the opportunity to supplement its performance ("Nacherfüllung") within a reasonable period of time.
6. If supplementary performance is unsuccessful, the Purchaser shall be entitled to cancel the contract or reduce the remuneration, irrespective of any claims for damages it may have according to Art. X.
7. There shall be no claims based on Defect in cases of insignificant deviations from the agreed quality, of only minor impairment of usefulness, of natural wear and tear or damage arising after the transfer of risk from faulty or negligent handling, excessive strain, unsuitable equipment, non-observance of assembly instructions, or from particular external influences not assumed under the contract. Claims based on defects attributable to improper modifications or repair work carried out by the Purchaser or third parties and the consequences thereof shall be likewise excluded.
8. The Purchaser shall have no claim with respect to expenses incurred in the course of supplementary performance, including costs of travel and transport, labour, and material.
9. The Purchaser's right of recourse against us pursuant to Sec. 478 BGB is limited to cases where the Purchaser has not concluded an agreement with its customers exceeding the scope of the statutory provisions governing claims based on Defects. Moreover, No. 8 above shall apply correspondingly to the scope of the right of recourse the Purchaser has against us pursuant to Sec. 478 para. 2 BGB.
10. Furthermore, the provisions of Art. X (Other Claims for Damages) shall apply in respect to damages claims. Any other claims of the Purchaser against us or its agents or any such claims exceeding the claims provided for in this Art. VII, based on a Defect, shall be excluded.

#### **VIII. Industrial Property Rights and Copyright; Defects in Title**

1. Unless otherwise agreed, we shall provide the Supplies free from third parties' industrial property rights and copyrights (hereinafter referred to as "IPR") with respect to the country of the place of destination. If a third party asserts a justified claim against the Purchaser based on an infringement of an IPR with respect to the Supplies made by us and then used in conformity with the contract, the Purchaser may cancel the contract or reduce the remuneration pursuant to the applicable statutory provisions.
2. Claims of the Purchaser shall be excluded if it is itself responsible for the infringement of an IPR.
3. Claims of the Purchaser shall also be excluded if the infringement of the IPR is caused by specifications made by the Purchaser, to a manner of use not foreseeable by us or to the Supplies being modified by the Purchaser or being used together with products not provided by us.
4. Where other defects in title occur, Art. VII shall apply correspondingly.
5. Any other claims of the Purchaser against us or its agents or any such claims exceeding the claims provided for in this Art. VII, based on a defect in title, shall be excluded.

#### **IX. Impossibility of Performance; Adaptation of Contract**

1. If delivery is not possible, Mazurczak and the Purchaser shall have the right to cancel the contract.
2. Where unforeseeable events within the meaning of Art. IV No. 2 substantially change the economic importance or the contents of the Supplies or considerably affect our business, the contract shall be adapted taking into account the principles good faith. Where doing so is economically unreasonable, Mazurczak shall have the right to cancel the contract. If we intend to exercise our right to cancel the contract, we shall notify the Purchaser thereof without undue delay after having realised the repercussions of the event; this shall also apply even where an extension of the delivery period had previously been agreed with the Purchaser.

#### **X. Other Claims for Damages**

1. Any claims for damages and reimbursement of expenses the Purchaser may have (hereinafter referred to as "Claims for Damages"), based on whatever legal reason, including infringement of duties arising in connection with the contract or tort, shall be excluded.
2. The above shall not apply in the case of mandatory liability, e. g. under the German Product Liability Act ("Produkthaftungsgesetz"), in the case of intent, gross negligence, injury of life, body or health, or breach of material contract obligations ("wesentliche Vertragspflichten"). However, Claims for Damages arising from a breach of a material contract obligation shall be limited to the foreseeable damage which is intrinsic to the contract, unless caused by intent or gross negligence or based on liability for injury of life, body or health. The above provision does not imply a change in the burden of proof to the detriment of the Purchaser.
3. To the extent that the Purchaser has a valid Claim for Damages according to this Art. X, it shall be time-barred upon expiration of the limitation period applicable to Defects pursuant to Art. VII No. 2.

#### **XI. Venue and Applicable Law**

1. Sole venue for all disputes arising directly or indirectly out of the contract shall be the place of business of Mazurczak. However, we may also bring an action at the Purchaser's place of business.
2. Legal relations existing in connection with this contract shall be governed by German substantive law, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

#### **XII. Severability Clause**

The legal invalidity of one or more provisions of this contract shall in no way affect the validity of the remaining provisions. This shall not apply if continuing the contract would represent an unreasonable hardship for one of the parties.

