

General Terms and Conditions of Sale and Delivery
of Kürvers Valves GmbH

We confirm your order subject to the exclusive application of our attached General Terms and Conditions of Sale and Delivery.

§ 1 Application

(1) These terms and conditions of sale shall apply exclusively. Differing or contrary terms shall not apply except if we expressly agreed to them in writing.

(2) These terms and conditions of sale shall also govern all future transactions between the parties and shall also apply if we perform delivery despite our knowledge of differing or contrary terms. Even if we refer to a written document, which contains terms and conditions of the purchaser (or a third party) or refers to such, this shall not constitute our acceptance of such terms and conditions.

(3) We retain ownership or copyright on all our offers and quotations, as well as drawings, diagrams, calculations, information, catalogues, models, tools and other documents and devices provided for the purchaser. Purchaser may not hand this property or contents of it to third parties, publish them or have them published by third parties, use or reproduce them without our express consent. Purchaser shall completely return these objects at our request and destroy any copies when they are no longer required of him in the ordinary course of business or if negotiations do not lead to the conclusion of a contract.

§ 2 Offer, Acceptance, Contents

(1) Insofar as the order constitutes an offer within the meaning of § 145 BGB we are entitled to accept the offer within four weeks.

(2) Our information about the subject of the delivery or the delivery itself (e.g. weights, dimensions, performance values, load bearing capacity, tolerances and technical data) as well as our representations of these (e.g. drawings and illustrations) are only approximately normative, unless the usability for the purpose intended in the contract presupposes an exact agreement. They are not guaranteed condition characteristics, but descriptions or markings of the delivery or service. Any customary deviations and deviations, which are due to legal requirements or represent technical improvements, as well as the replacement of components by equivalent parts, are permissible insofar as they do not impair the usability for the contractually intended purpose.

§ 3 Prices, Payment

(1) Prices are ex works excluding packaging, legal VAT, for export deliveries plus customs duties, fees and other public charges.

(2) Insofar as the agreed prices are based on our list prices and the delivery is to be effected more than four months after conclusion of the contract, our list prices at delivery will apply (each less an agreed percentage or a fixed discount).

(3) The purchase price is due and payable within 30 days from the date of the invoice. For the date of the payment the date of credit in our account is decisive. From the due date default interest in the amount of 9 % above the respective base interest rate p. a. shall accrue. We reserve all rights to claim further damages for delay.

§ 4 Offset, Retainer

The purchaser shall be entitled to offset only insofar as the purchaser's counterclaim is acknowledged, undisputed or assessed in a legally binding judgement. The purchaser is entitled to claim retainer rights only to the extent such rights are based on the same transaction.

§ 5 Delivery

(1) Delivery is conditioned upon timely and proper performance of all duties of the purchaser. Defences based on non-performance of the contract are reserved.

(2) Time limits and deadlines for deliveries and services we indicate are only approximate, unless a fixed deadline or a fixed date has been expressly promised or agreed upon. If shipping has been agreed, the delivery periods and delivery dates refer to the date of handing over to the freight forwarder, freight carrier or another third party responsible for the transport

(3) In case of default in acceptance or other breach of duties to cooperate by the purchaser we are entitled to claim any resulting damage including but not limited to additional expenses, if any. Further damages are reserved. In this case, the risk of loss or damage to the goods passes to the purchaser at the time of such default or breach of duty to cooperate.

(4) We are not liable for the impossibility of delivery or for delays in delivery, insofar as these are caused by force majeure or other events unforeseeable at the time of the conclusion of the contract (e.g. operational disturbances of all kinds, difficulties in material or energy procurement, transport delays, strikes, legal exclusions, energy or raw materials, difficulties in procuring necessary regulatory approvals, governmental measures, or failure to supply suppliers in a proper or timely manner) which we are not responsible for. Insofar as such events make the delivery or service substantially more difficult or impossible and the hindrance is not only of temporary duration, we are entitled to withdraw from the contract. In the case of obstacles of a temporary duration, the delivery or performance periods are extended or the delivery or performance dates are postponed with the period of the hindrance plus an appropriate start-up period. If, due to the delay, the purchaser cannot be expected to accept the delivery or service, he can withdraw from the contract towards us by sending an immediate written declaration.

§ 6 Place of performance, shipping, packaging, transfer of risk, acceptance

(1) Place of performance for all obligations under the contract is the office of Kürvers Valves GmbH, unless otherwise specified.

(2) The delivery and the packaging are subject to our reasonable discretion. The goods are, unless otherwise expressly agreed, delivered unpacked and not protected against rust.

(3) The risk shall at the latest pass to the shipper when the goods have been handed to the shipper, carrier or other third party to carry out the dispatch to the customer (the beginning of the loading is relevant). This applies even if partial deliveries are made or we have taken over other services (eg shipping or installation). In case there is a default in delivery due to a circumstance, for which the purchaser is responsible, the risk passes to the purchaser from the day the delivery item is ready and we have shown this to the purchaser.

(4) Storage costs after the risk has passed to the purchaser are carried by the purchaser. If stored by us storage cost amounts to 0.5% of the invoice amount plus the VAT of the delivered items to be stored per begun week. The right to claim and prove additional or lesser storage costs is kept.

(5) The shipment will be insured by us only at the express request of the purchaser and at his own expense against theft, breakage, transport, fire and water damage or other insurable risks.

(6) If acceptance is required, the goods shall be deemed accepted if

- the delivery and, provided we promised the installation, the installation is complete,

- we have communicated this to the purchaser with regards to the acceptance fiction under this § 6 (6) and urged him to accept,
- ten working days have passed since the delivery or installation or the customer has started with the use of the purchased item (eg. has set the delivered valves in operation) and in this case six working days have passed,
- the purchaser has failed to make the acceptance within this period for any other reason than because of a default shown to us, which made the use of the goods impossible or significantly impaired.

(7) Incoming goods are to be accepted by the purchaser, even if they have minor defects, regardless of the warranty rights.

(8) Purchaser undertakes to dispose the packaging at its own responsibility and at its own expense.

§ 7 Retention of Title

(1) We retain title to the goods until receipt of all payments in full. In case of breach of contract by the purchaser including, without limitation, default in payment, we are entitled to take possession of the goods.

(2) The purchaser shall handle the goods with due care, maintain suitable insurance for the goods and, to the extent necessary, service and maintain the goods.

(3) As long as the purchase price has not been completely paid, the purchaser shall immediately inform us in writing if the goods become subject to rights of third persons or other encumbrances.

(4) Insofar as the above securities exceed the secured claim by more than 10 %, we are obligated, upon our election, to release such securities upon the purchaser's request.

§ 8 Warranty

(1) Precondition for any warranty claim of the purchaser is the purchaser's full compliance with all requirements regarding inspection and objection established by sec. 377 HGB (German Commercial Code). The goods shall be deemed to have been approved by the purchaser in respect of obvious defects or other defects which would have been recognizable in the case of an immediate, careful examination, if we did not receive a written notification of defects within seven working days after delivery. With regard to other defects, the delivery items shall be deemed to have been approved by the purchaser if the complaint does not reach us within seven working days after the date of the defect; if the defect was already recognizable at an earlier date for the purchaser in normal use, this earlier date for the start of the complaint period is nevertheless decisive.

(2) The warranty period is one year from delivery or, if acceptance is required, from acceptance. This period does not apply to claims for damages of the purchaser resulting from injury to life, limb or health or from intentional or grossly negligent breaches of duty by us or our agents, which in each case become statute-barred according to the statutory provisions.

(3) In case of non-conformity of the goods the purchaser is entitled to alternative performance in the form of subsequent improvement or delivery of conforming goods. If such alternative performance has failed, the purchaser is entitled to reduce the purchase price or to withdraw from the contract.

§ 9 Liability

(1) In case of intent or gross negligence on our part or by our agents or assistants in performance we are liable according to the provisions of applicable law; the same applies in case of breach of fundamental contract obligations. To the extent the breach of contract is unintentionally our liability for damages shall be limited to the typically predictable damage. Liability for consequential damages is excluded.

(2) Our liability for culpable damage to life, body or health as well as our liability under the Product Liability Act shall remain unaffected.

(3) Any liability not expressly provided for above shall be disclaimed.

§ 10 Applicable law, Jurisdiction

(1) This contract shall be governed by the laws of the Federal Republic of Germany (excluding the Convention on Contracts for the International Sale of Goods).

(2) Place of performance and exclusive place of jurisdiction for all disputes arising out of or in connection with this contract shall be Düsseldorf.