

Terms and Conditions of Sale and Supply of SIBRE Siegerland Bremsen GmbH

Valid for SIBRE Siegerland Bremsen GmbH



1. Scope and general provisions

(A) For commercial relationships between SIBRE Siegerland Bremsen GmbH (SIBRE) and companies pursuant to Section 310 (1) of the German Civil Code (BGB).

(B) The following terms and conditions of sale and supply apply exclusively; we do not accept any other conditions unless we have expressly agreed to them in writing.

(C) We are authorised to store and process the data of the client by EDP within the framework of the applicable data protection laws, provided these data are required to conduct our business. (D) Trade terms according to the International Commercial Terms (INCOTERMS) apply in their applicable version as amended if they have been expressly agreed upon or are referred to in these terms and conditions of sale and supply.

2. Offers & amendments

(A) Our offers are non-binding until a contract has arisen by way of our order confirmation in text form (pursuant to Section 126b BGB) or the implementation of an order.

(B) Our offers are non-binding until we have accepted the order by our client by way of an order confirmation in text form or implementation of the order. Rescission, supplementation and/or amendments of a contract or these terms and conditions require text form.

(C) Cost estimates, drawings and any other documents produced in the context of works planning remain our property even after they are sent to clients. We reserve all copyrights to such documents. In the absence of our written consent, such documents may not be duplicated nor made available to third parties. This also applies to electronic storage media and any other type of data and information carrier. If no order is placed with us we are entitled to demand the return of the documents provided to the client, especially drawings. The documentation pertaining to our offers and/or order confirmations, in particular images and performance and weight specifications, shall be binding within the customary margins, unless expressly and separately agreed otherwise. Auxiliary equipment developed or produced by us for our client in the context of the order remains our property. This particularly applies to drawings, models, moulds, matrices and tools.

3. Supply terms and passing of risk

(A) Unless agreed otherwise, we supply and perform EXW (Eschenburg-Eibelshausen).

(B) Delivery period statements are non-binding unless we have expressly agreed a delivery period with the client. Delivery periods commence only once the client has fulfilled those of its obligations to us which are required for order implementation. We reserve the defence of non-performance of the contract. The delivery period commences upon dispatch of our order confirmation but not until any permits required for order implementation have been received.

(C) Where collection of the goods by the client has been agreed or the client is responsible for organising transport of the goods, the delivery period is deemed observed if the goods to be supplied are ready for dispatch by the time of its expiry. Where we are due to ship the goods, the delivery period is deemed observed if the ordered goods are dispatched on time. (D) In the event of force majeure, which significantly impedes or entirely prevents delivery, our duties to supply are suspended. Force majeure in this case applies if the damaging event is an external impact, i.e. is not due to the nature of the jeopardised good, and the event could not be averted or rendered non-hazardous even under application of the most extensive reasonable level of care.

This also applies where these circumstances occur in the operations of one of our suppliers or vicarious agents. Where, due to these circumstances, a significant change in circumstances (at the point of contract conclusion) occurs, we are entitled to withdraw from the contract.

(E) We are entitled to supply partial deliveries provided it would not be unreasonable to expect these to be acceptable to the client in question. We bear any associated additional costs unless agreed otherwise.

(F) The risk passes to the client at the latest when the delivery leaves our works or commissioned warehouse. Should dispatch be delayed despite our readiness to deliver for reasons for which we are not responsible, the risk shall pass to the client upon readiness to deliver at the latest.

This also applies where we supply partial deliveries or we have also undertaken to perform other services such as shipping costs or delivery. Where an acceptance procedure is to take place, this shall be decisive for the transfer of risk. It must be carried out without delay by the date of

acceptance, alternatively after our notification of readiness to accept. The client may not refuse acceptance where there is a significant defect.

(G) The client must issue a confirmation of receipt upon receiving the goods and send it to us free of charge; the confirmation must comply with the requirements of Section 4 No. 1 b of the German Value Added Tax Act (UStG) and Section 6 a UStG in conjunction with Section 17 a of the German Value Added Tax Ordinance (UStDV).

(H) If, upon request by the client, the delivery is delayed by more than one month after our notification of readiness to deliver the client may be required to pay a storage charge of 0.5% of the net price of the affected goods per commenced calendar month, but at most a total of 5% of the net price in one year. The amount is due immediately in each case. Both we and the client are entitled to prove that storage costs are in fact higher or lower.

4. Price structure & payment terms

(A) Unless otherwise agreed, our prices apply according to the applicable INCOTERMS - EXW Eschenburg-Eibelshausen. Where the delivery or service is subject to VAT, the VAT applicable to the agreed price must be paid at the statutory rate upon issue of a proper invoice which entitles to input tax deduction.

(B) Where a period of less than four months passes between contract conclusion and the agreed delivery date, the prices applicable on the day of contract conclusion apply. Where a delivery period of more than four months has been agreed, we are entitled to pass on cost increases in the price, in particular increases in the cost of materials and wage costs. The increased price applicable on the day of delivery shall then apply. We are entitled up to the day of delivery to pass on increases in manufacturing or procurement costs in the price, in particular material and wage costs increases, while maintaining our margin in terms of amount.

The right to increase the price does not apply where delivery delays are demonstrably caused by us. It also does not apply where the change in manufacturing or procurement costs does not amount to at least 50% of the manufacturing and procurement costs used as a basis upon price agreement. We shall prove the reasons for the price adjustment and the calculation of its extent upon request. In the event of a price increase of over 5% of the originally agreed total net price the client is entitled to withdraw from the contract in this regard. (C) Unless agreed otherwise, payment of the purchase price is due without discount within 30 days of invoicing by bank transfer to one of our bank accounts. Early payment discounts require a special written agreement.

(D) In the event that, following contract conclusion, we learn of a deterioration in the financial circumstances of the client we are entitled, irrespective of earlier agreements, to demand the immediate payment of the purchase price or an adequate security or, if the client fails to meet our demand, to demand damages or to withdraw from the contract following prior warning or the setting of a period of grace. This particularly applies if we should receive knowledge of cause for opening insolvency proceedings.

(E) We reserve the right to demand prepayment or payments by instalments if the client is a new client, is domiciled abroad, the delivery address is abroad, the client has ordered bespoke products or there are reasons to doubt the client's liquidity.

(F) The client only has rights of retention based on the same transaction. Unless agreed otherwise, offsetting by the client is only permitted against undisputed or legally established counterclaims.

5. Retention of title

(A) We reserve ownership in the purchase item up to complete settlement of all claims from the commercial relationship with the client.

(B) In the event of breach of contract by the client, in particular in the event of failure to pay, we shall be entitled to demand surrender of the purchase item. Where we take back the purchase item, this shall only constitute withdrawal from the contract if we have notified the client in writing to this effect. After taking back the purchase item, we shall be entitled to realise the same; the proceeds of realisation shall be credited against the client's liabilities, minus reasonable costs of realisation.

(C) The client shall handle the purchase item with due care. Where the client is a registered trader, it shall insure the purchase item adequately at new replacement value

against damage from fire, water and theft at its own expense.

(D) We remain the owner of the goods, regardless of the processing stage or form in which they manifest themselves. Acquisition of ownership of the client pursuant to Section 950 of the German Civil Code (BGB) is excluded. The client shall acquire any ownership on our behalf and store all goods on our behalf.

If our goods are mixed or combined with movable property of the client, the client herewith with immediate effect transfers to us the property or co-ownership rights in the mixed or combined objects and shall store these for us with care.

The client shall only be entitled to combine our goods with reality after all claims from the commercial relationship have been settled. Should the combination take place nevertheless, Section 951 BGB shall apply. The contractual claims, particularly claims for damages, remain otherwise unaffected.

(E) The client shall immediately inform us in the event of pledging or other access of third parties in order to enable us to commence legal action in accordance with Section 771 of the German Code of Civil Procedure (ZPO). Where the third party is unable to compensate us for the legal and out-of-court costs of legal proceedings pursuant to Section 771 ZPO, the client is liable to us for the costs resulting from the legal proceedings.

(F) The client shall be entitled to resell the purchase item in the course of ordinary business proceedings. The client herewith with immediate effect assigns to us all claims to the extent of the invoice amount (including VAT) of our claim which arise for the client from the sale of a work delivery or a comparable legal relationship against its customers or third parties. This applies irrespective of whether our goods have previously been processed, mixed or combined with movable property. We herewith with immediate effect accept the assignment. Even after the assignment, the client remains revocably entitled to collect this claim. This shall be without prejudice to our right to collect the claim ourselves. However, we undertake to refrain from collecting the claim as long as the client fulfils its payment obligations from the proceeds taken, does not enter default of payment and, especially, no application to open insolvency proceedings is filed. However, where this is the case, we may demand that the client disclose to us the assigned claims and the associated debtors, make all statements required for collection, provide the associated documentation and inform the debtors of the assignment.

(G) We undertake to release the securities to which we are entitled upon request by the client to the extent that the realisable value of our securities exceeds the value of the claims to be secured by more than 20%. The choice of the securities to be released shall be ours.

6. Rights in the event of defects

(A) A guarantee with regard to particular qualities only applies where such qualities have been expressly included in the contract. We reserve the right to improve and optimise the quality of our products. A reference to German or international standards (DIN, ISO or EN) involves a detailed description of goods, but no guarantee as to qualities. The supply of samples or trial parts is non-binding and only constitutes a guarantee of qualities if this has been expressly agreed in writing.

(B) Where our goods are used abroad the client must check the compliance of our products with the national regulations and standards and make any adjustments necessary to meet the same. SIBRE products only comply with the German legal order and standards; we do not provide any guarantees with regard to compliance with different regulations. No claims for defects may be asserted in the event of lack of compliance of our products with different national standards.

(C) Where the transaction is of a commercial nature, the client's claims for defects are conditional upon the client having properly met its inspection and defect notification duties pursuant to Section 377 of the German Commercial Code (HGB). The purchase item must be inspected immediately for material defects and transport damage. Notifications of defect must be issued immediately. Defects particularly include defective construction, defective materials and/or defective workmanship, provided these render the affected components unusable or significantly restricted in usability. If the suitability of the delivered good is merely insignificantly reduced, no claims for defects may be asserted.

(D) No guarantee is undertaken for damage incurred due to the following reasons: unsuitable or inappropriate use, incorrect installation or launch by the client or a third

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party, natural wear-and-tear, incorrect or negligent treatment, unsuitable operating materials.

(E) If our goods are defective and the client has met the defect notification and inspection duties pursuant to Section 377 HGB, we are entitled to choose whether to perform our obligation to provide subsequent performance by additional delivery or remedial works. The client must set an appropriate period for this purpose. Replaced parts become our property.

(F) The client may claim compensation for any expenses incurred by the client in direct connection with our subsequent performance. Transport costs incurred due to the subsequent delivery of the product to a location different from the original delivery address are excluded from the above provision.

(G) In the event of inadequate subsequent performance the client may reduce the remuneration or, provided it has expressly issued a warning to this effect and set a further appropriate period of grace for subsequent performance, withdraw from the contract.

(H) If the client sells our goods or a new object into which the goods have been integrated, any recourse claims (pursuant to Section 478 BGB) against us are only valid in the context of statutory warranty claims.

7. Liability for damages

(A) Claims of the client beyond the stipulated claims due to defects are excluded unless agreed otherwise in this section. In addition, we do not accept liability in any case for damage which has been incurred in items other than the delivered item itself. Liability for lost profits or other financial damage of the client is likewise excluded.

(B) SIBRE is not liable for damage incurred due to intent, gross negligence or incorrect use of the product. In addition, we are not liable in case of improper use of the product or where the application of the product is different from the cases of application discussed during the technical consultation. We also do not provide compensation for damage due to an incorrect interpretation of our products if this is due to incorrect or insufficient information on the part of the client during the technical consultation regarding the products.

(C) The duty to compensate for material damage is in case of negligent breach of essential contractual obligations on our part limited to typically occurring material damage.

(D) The client may not assign its agreed claims.

(E) The period of limitation for claims regarding our liability for damages is 12 months.

(F) Mandatory liability under the German Product Liability Law is not affected.

8. Provision of materials

(A) Where provision of materials by the client has been agreed the client must provide the materials free of charge, in good time and in sound condition. In addition, all documents and information required by us must be sent to us in good time. Materials and documents provide remain the property of the client.

(B) Our liability is excluded where defects have developed or deliveries are delayed and this is due to defective instructions or specifications, late provision or defective quality and/or malfunction of the provided products.

9. Non-disclosure

(A) Within the commercial relationship, all involved parties undertake to treat all information which they obtain in the context of the commercial activities as confidential for the duration of the commercial relations and beyond. This information shall not be disclosed to third parties nor be used without authorisation for the party's own business purposes. This also applies to the conclusion and contents of this contract; the parties to the contract will impose these obligations also on their employees. In addition, the parties undertake to ensure that their vicarious agents likewise observe these provisions.

(B) The German Data Protection Act applies to the parties at all times; personal data are only disclosed as a consequence to performance according to contract.

10. Industrial property rights, copyrights

(A) Performance of our deliveries does not transfer any usage rights to industrial property rights to which we are entitled. A transfer of such rights only takes place on the basis of a separate written agreement.

(B) We do not check for potential violations of intellectual property rights by third parties, particularly patent, trademark, design or copyrights and other industrial property rights - whether national or international - concerning

goods manufactured according to the specifications of the client. The client is responsible for ensuring that the goods manufactured according to its specifications are unencumbered by rights of third parties. Placement of an order is a guarantee to this effect by the client.

(C) Concerning our own products, we guarantee that no commercial property rights in Germany are violated. We are not liable for any violation of intellectual property rights in the rest of the EU and countries outside the EU.

11. Miscellaneous provisions

(A) Should provisions or clauses be invalid in whole or in part, the remaining provisions will be unaffected.

(B) If the client is a registered trader the place of jurisdiction is Frankfurt am Main. However, we are entitled to commence legal action against the client at the client's place of residence or business.

(C) If the client is domiciled outside the EU, all disputes are adjudicated upon by an arbitration tribunal pursuant to the Rules of Arbitration of the German Institution of Arbitration (DIS); recourse to the courts is excluded. The language of negotiation is English, the place of negotiation is Frankfurt am Main.

(D) All deviations from these terms and conditions require our written consent.

(E) The law of the Federal Republic of Germany applies to all legal relations between the client and SIBRE, to the exclusion of UN law on the sale of goods.