

## **General Terms and Conditions of Business** of ILUDEST Destillationsanlagen GmbH

### **1. General**

Our General Terms and Conditions of Business apply to all our offers and quotations, deliveries and services and are set out below.

- a) Any general terms and conditions of business and delivery conflicting with or deviating from our Terms and Conditions, and in particular a customer's standard form terms and conditions of purchase, do not apply unless expressly confirmed by us in writing.
- b) Any oral arrangements, agreements, representations or warranties made by our employees prior to or on concluding the contract require written confirmation to be effective.
- c) All cost estimates are non-binding and with costs, unless explicitly agreed otherwise in writing.
- d) These General Terms and Conditions of Business and Delivery shall also apply all future deliveries made to the Customer until the effective date of new general terms and conditions of business.

### **2. Offer and Conclusion of Contract**

- a) Our offers are subject to confirmation and not binding unless explicitly defined as binding.
- b) If the Customer does not accept our offer within two weeks from receipt, we are entitled to revoke/withdraw the offer.
- c) All orders placed with ILUDEST require a written confirmation of order to be effective. The same applies to any supplements, amendments or side agreements.
- d) All illustrations contained in prospectuses or any other printed matter as well as data like measurements and dimensions, pack sizes, weights, pictures, photographs and figures, descriptions, assembly sketches, drawings, simulation results or samples and models are for ease of reference alone. They are non-binding and do not represent any warranted characteristics or guaranteed quality unless explicitly specified as such. We reserve the right to alter or change the technical specification our products.
- e) The provision or sale of products, systems, designs, models, services, illustrations or other records does not grant the prospective buyer or Customer any rights or licences under any patent, utility model, registered design or copyright other than the non-exclusive use of the products in their own operation.
- f) All our products, all specifications, drawings, descriptions and illustrations are protected by industrial property rights and, if they have not been released for publication by us, are strictly confidential. The prospective buyer or Customer undertakes not to disclose this information to any third party, save for purposive use of the products in their own operation.
- g) No records entrusted to prospective buyers or Customers, like, for example, offers, drawings, illustrations and descriptions, shall be copied or published (in whole or in part) or disseminated to any third party without our prior written consent.  
If requested so, they shall be returned to us without any delay.

### **3. Export Control**

- a) Our deliveries and services (performance of contract) are subject to the proviso that performance is not impeded by any national or international export control legislation, particularly embargoes or other sanctions. The Customer undertakes to procure all information and records required for the export or shipment. Any delays attributable to export inspections or permit procedures shall render ineffective any time limit or delivery period. If the grant of necessary permits is refused or if the delivery or service is not subject to approval, then the contract shall be deemed void with respect to the parts concerned.
- b) We shall be entitled to terminate the contract without notice if such termination is required in order to comply with national or international legislation. In this case any assertion of damages or the enforcement of other rights by the Customer on the grounds of said termination are excluded.
- c) On passing on the products delivered by us (hardware and/or software and/or technology and/or the pertinent records, irrespective of the mode and form they have been provided) or work and services performed by us (including technical support of any kind) to any third party domiciled abroad, the Customer shall comply with the respectively applicable provisions of national and international (re-)export control legislation.

### **4. Prices, Terms and Conditions of Payment**

- a) Our prices are in euros (€) and ex works (EXW acc. to the INCOTERMS<sup>®</sup> 2010). They are exclusive of packaging, freight, postage, transport insurance and VAT which will be shown separately on each invoice.
- b) Unless agreed otherwise, our invoices are due for payment in 30 days from the date of the invoice without discount.  
For orders in excess of EUR/€ 50,000.00, the following terms of payment apply:
  - 40% of the contract amount upon placement of order, net;
  - 40% of the contract amount on readiness for dispatch, net;
  - 20% of the contract amount 30 days from the date of the invoice, net.Unless agreed otherwise in writing, the handling of export orders shall be carried out against prepayment of 40% of the total order value and a irrevocable letter of credit opened by the Customer and confirmed by a German bank amounting to the residual 60% of the contract amount, or against an absolute guarantee unlimited in time by a renowned credit institute. Any and all bankin charge, whether domestically or abroad, are at the Customer's expense.
- c) Should the Customer fail to pay on time, then we shall be entitled to charge default interest to the amount of 8 percent above the base interest rate of the European Central Bank from the due date.
- d) If the Customer defaults or if there is a material deterioration in the Customer's economic situation, we shall be entitled to request advance payments or the provision of security or to withdraw from the contract.
- e) We shall be entitled to principally use any payments made to settle the oldest debt due.
- f) If the Customer is in arrears with payments, we shall be entitled to request prompt cash payment of all undisputed payments due that result from the business relationship with them. Moreover, we shall, also in this case, be entitled to effect delivery against advance payments or the provision of security only. This right shall not be excluded by the granting of a respite or the

- accepting of bills of exchange or cheques.
- g) The Customer may only offset against our claims if the Customer's counterclaims have not been contested or are recognized by declaratory judgment. The Customer shall only be entitled to hold back payments if the client's counterclaims have not been contested or are recognized by declaratory judgment.

## **5. Delivery, Delivery Periods, Default**

- a) Unless expressly agreed otherwise in writing, the dates and time limits stated by us are non-binding.
- b) The commencement and the observance of agreed delivery periods presuppose the fulfilment of the duties to co-operate, and in particular, the timely receipt of all provisions, records, permits, tests, releases, the observance of agreed payment terms, especially prepayments or the opening of a letter of credit, to be supplied by the Customer. Any failure to duly fulfil these prerequisites shall result in a reasonable extension of the delivery periods; this shall not apply if the delay is solely attributable to ILUDEST.
- c) Force majeure and other circumstances beyond our control, like strikes, lockouts, interruptions of operations, supply and operational bottlenecks and/or delayed delivery or non-delivery by pre-suppliers and/or work or services subsequently or additionally requested by the Customer shall extend delivery periods by the delay times caused and shall release us from the obligation to deliver should delivery be rendered impossible by such circumstances. The above mentioned circumstances shall also be beyond our control if occurring during an already existing delay in delivery.
- d) Part deliveries and their respective settlement shall be admissible unless they are unreasonable to the Customer.
- e) If our delivery is delayed, then, upon our request, the Customer shall declare within an appropriate period of time whether they insist on delivery or intend to assert their other statutory rights.
- f) In case of default in delivery, the Customer shall only be entitled to withdraw from the contract in accordance with the statutory provisions if the delay is attributable to us. Section 10 hereof shall apply to any claims for damages on the part of the Customer.
- g) If the Customer is in default of acceptance or intentionally or negligently infringes other duties to co-operate, then we shall be entitled to claim compensation of the damage caused by this, inclusive of other additional expenses to the amount of 0.5% of the price of the products to be delivered per month or part thereof, and up to 5% of the price of the products to be delivered at the most, with either contractual party reserving the right to prove that additional expenses to a higher or lower amount have arisen. Any further claims on the grounds of delay of acceptance shall remain unaffected by this.

## **6. Installation, Assembly and Commissioning**

- a) ILUDEST will conduct a practical trial of the devices, systems and plants in which all functions and process sequences are put to the test according to the specification set out in the catalogue/order, or to the Customer's specification. This test will be carried out in our house and is part of the sales contract.

- b) Upon special request, installation and assembly at the Customer's site shall be made by our qualified technical personnel.  
This shall apply accordingly to the startup of devices and systems supplied by us.  
The services set out in subsection 6.b) shall only be part of the sales contract if explicitly agreed, by separate arrangement where necessary.
- c) In case of delays beyond the supplier's control, the costs for waiting times and further journeys required from our assembly and field staff, shall be borne by the Customer.

### **7. Shipment and Passing of Risk**

- a) Unless agreed otherwise, shipment shall be ex works (EXW) Waldbüttelbrunn and at the Customer's expense and risk.
- b) The risk shall pass to the Customer upon ILUDEST handing the goods to the forwarder or carrier.
- c) Unless agreed otherwise, the mode and route of transport shall be chosen by us.  
Acceptance of the goods without objection by the forwarder or carrier shall be deemed proof of flawless packaging.
- d) Upon the Customer's request and expense, we shall insure the shipments against the usual risks of transport.

### **8. Complaints and Notices of Defects**

- a) The Customer shall notify obvious defects in quality immediately in writing, at the latest 7 days after receipt of the goods. Any other quality defects shall be notified in writing after detection without any undue delay. In each case, the date the notice of defect is received at ILUDEST shall be authoritative.
- b) If a defect has been wrongly notified, then we shall be entitled to demand reimbursement by the Customer of the expenditure incurred by us unless the Customer is able to prove that no fault for the wrongful notice of defect can be attributed to them.
- c) If a notice of defect is received too late, any claims based on quality defects shall be barred.
- d) The Customer shall not be entitled to refuse acceptance of delivery as a consequence of minor defects.

### **9. Defects in Quality**

- a) Any claims for defects in quality shall be time-barred within 12 months, with the limitation period beginning to run upon the completion of installation, at the latest, however, 6 months after delivery (passing of risk) with respect to all other cases.
- b) If a defect in quality is found within the limitation period the cause of which already existed at the time of the passing of the risk, we shall be entitled to remove such defect by repair (cure) or by delivering a defect-free product at our option. The defective product shall be returned to us for repair.
- c) The limitation period shall be interrupted for the duration of the time required for repair. It does, however, not restart from the very beginning.

- d) Should repair ultimately fail, then the Customer shall be entitled to withdraw from the contract or demand reduction of the purchase price.
- e) Any repair claims based on negligible deviations from the agreed condition and quality or minor impairments of the fitness for use (merchantability) are excluded. The assertion of any further rights shall remain unaffected thereof.
- f) The following defects are not considered quality defects:
- Breakage of glass components, particularly in cases where the equipment has been installed and put into operation by our personnel, with all agreed maximum process parameters having been reached without any damage to the individual components occurring, unless our material specialists had been consulted without any undue delay and arrived at a different conclusion after assessing the damage;
  - Natural wear and tear;
  - Condition and quality of the goods or damage occurred after the passing of the risk as a consequence of improper handling, storage or installation, non-compliance with the installation and handling instructions, or excessive load, stress or use, or unsuitable service fluids, improper startup or maintenance;
  - Condition and quality of the goods or damage occurred as a consequence of force majeure, special outside conditions not anticipated in the contract or coming into existence due to the use of the goods beyond normal use or the use anticipated in the contract;
  - Non-reproducible software errors. Any claims based on quality defects shall be barred if the product has been modified by any third party or by fitting parts of third-party origin, unless where the defect is not attributable to such modification. We do not assume any liability for any condition and quality of the product that is based on the Customer's prescribed design or choice of material.
- g) Claims to recourse on the part of the Customer shall not apply to any agreements exceeding the statutory claim based on defects like, for example, ex-gratia provisions, which the Customer has agreed with consumers.
- h) The Customer shall allow ILUDEST or any third party obliged to give a warranty the time and opportunity required to perform warranty work. With the exception of categories of cases under Section 637 BGB (German Civil Code), any performance of such work by the Customer themselves shall require our prior written consent. We shall bear the cost of repair to an amount which shall be in reasonable proportion to the value of a flawless product, the seriousness of the defect and/or the possibility to remove the respective defect by another type of cure; any costs extending beyond this are at the Customer's expense.
- i) Apart from that, our obligation to pay damages or reimburse fruitless expenditure for defects in quality shall be subject to the provisions of section 9 hereof. Any farther-reaching claims by the Customer based on quality defects other than those provided for by section 8 hereof are excluded.

## **10. Damage Claims**

- a) We shall assume liability for damages or the reimbursement of fruitless expenditure (hereinafter referred to as "damages") resulting from the breach of contractual or extra-contractual obligations only in cases of
- Intent or gross negligence;
  - Negligent or intentional damage resulting from loss of life, bodily injury or impaired health;

- Assumption of a guarantee of quality or durability;
  - Negligent or intentional breach of vital contractual obligations;
  - The compulsory liability provision of the German Product Liability Act (ProdHaftG); or
  - Other compulsory liability.
- b) Otherwise, any claims for damages for infringement of vital contractual obligations shall be limited to the foreseeable damage typical to the contract, unless we should be liable for damage caused intentionally or by gross negligence or resulting from loss of life, bodily injury or impaired health, or due to the assumption of a guarantee of quality.
- c) Any liability for damages other than the liability provided for by section 10 hereof, is excluded irrespective of the legal nature of the asserted claim. This shall particularly apply to damage claims based on culpa in contrahendo, on other breaches of duty and comprise any direct or indirect damage of any kind other than those set out in this section 10, including consequential damage, missed use, lost income or profits or fruitless expenditure as well as damage claims by any third party, also in case of negligence.
- d) If our liability has been excluded or limited, this shall also apply to the personal liability of our salaried and waged employees, legal representatives and agents and any other people employed by us in the performance of our obligations.

## **11. Retention of Title**

- a) We reserve ownership in the goods delivered until all claims which have arisen and may yet arise out of the business relationship, have been settled.
- b) We are entitled to insure the products delivered at the Customer's expense against fire, breakage, floods and escape water and other damage, unless the Customer is able to prove that they effected insurance cover themselves.
- c) The Customer shall neither be allowed to sell or pledge the goods, nor transfer them by way of security. The Customer shall promptly notify us of any attachments, seizures or other disposal/orders by any third party.
- d) In case of any behaviour by the Customer in breach of contract, particularly in the event of default, we shall be entitled to withdraw from the contract upon ineffective expiry of a reasonable respite, and the Customer shall be obliged to return the products.
- e) Should bankruptcy or insolvency proceedings be instituted against the Customer, then we shall be entitled to withdraw from the contract and demand immediate return of the goods delivered by us.
- f) Should the goods be inseparably combined or mixed with other products not belonging to us, then the Customer shall acquire a co-ownership in the new product subject to the ratio of the value of the goods delivered to the value of the other combined or mixed products at the time of combining or mixing. If the goods have been combined or mixed in such a way that the Customer's product may be considered the main component, then it is hereby deemed agreed that the Customer shall assign to us a pro-rata co-ownership. The Customer shall hold in safe custody such sole or co-ownership by way of an accessory contractual obligation without remuneration.

## **12. Place of Performance, Venue and Choice of Law**

- a) The contractual relationship shall exclusively be governed by the Laws of the Federal Republic of Germany.
- b) The place of delivery and payment shall be Waldbüttelbrunn.
- c) The place of jurisdiction shall be Würzburg, if the Customer
  - is a merchant under the German Commercial Code (HGB);
  - is a legal person under public law or a special fund under public law;
  - has no general venue of litigation in Germany; or
  - moves their domicile or habitual residence to a foreign country; or
  - if the Customer's domicile or habitual residence is unknown at the time legal action is being brought.

We shall also be entitled to sue in the court having jurisdiction over the Customer's domicile or one of their branch offices.

## **13. Severability Clause**

Should individual provisions of these Terms and Conditions or any further agreements be or become ineffective, this shall not affect the effectiveness of the remaining provisions. The contractual parties shall be obliged to replace the ineffective provision by an effective regulation, coming as close as possible to the economic purpose of the ineffective provision.

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