



GENERAL TERMS OF SALE AND DELIVERY

FOR

Clemco International GmbH

(in the following referred to as Clemco)

The terms of sale and delivery specified below shall apply to all quotations, orders and deliveries unless other provisions have been specifically and explicitly agreed upon by the parties in textual form.

In case of discrepancy between the parties` general conditions, the General Conditions given below shall prevail.

1. QUOTATION - ORDER – PRICE

1.1.

All quotations are always subject to Clemco`s acceptance in textual form according to the original quotation.

1.2.

An order is accepted at the price valid at the time of Clemco`s acceptance of the quotation. All prices are quoted excl. of VAT.

In case of changes in costs, rates of currencies, taxes, or the like prior to delivery, Clemco reserves the right to change the price, or in case Purchaser cannot accept the changed price, to cancel the order without liability.

1.3.

Clemco reserves the right to make minor changes in the delivery which, at Clemco`s discretion are deemed technically necessary.

1.4.

Unless otherwise specified in Clemco`s quotation / order confirmation, all price quotations shall remain firm for thirty (30) days from the quotation date.

2. CANCELLATION OF ORDERS / LESS QUANTITIES

2.1.

Cancellation or changes regarding confirmed orders can only take place through Clemco`s textual consent of this wish from the Purchaser. If quantities are reduced (i.e. for spare parts or accessories) prices per piece may increase.

Cancellation of confirmed order after start of manufacturing will not be accepted for less than 30 % of the original contract sum.

Cancellation of confirmed order for customized equipment will not be accepted.

3. PRODUCT INFORMATION, DRAWINGS AND DESCRIPTIONS

3.1.

All information and data contained in product brochures and price lists are binding only to the extent that they are by reference expressly included in Clemco`s acceptance of quotation.

3.2.

Any drawings or technical documents intended for use in the fabrication or installation of the Clemco equipment and submitted to Purchaser prior or subsequent to the formation of the contract remain the exclusive property of Clemco. Such material may not, without Clemco`s textual consent, be utilized by Purchaser for purposes outside of the contract or copied, transmitted or communicated to a third party.

3.3.

Purchaser will be responsible for all costs and all delays in fabrication, shipping, installation or commissioning, which result from any approval delays or requested changes on the part of the Purchaser.



4. DELIVERY

4.1.

Any agreed trade term shall be in accordance with the current **INCOTERMS** in force at the date of Clemco's acceptance of quotation.

If no trade term is specifically agreed in textual form, the delivery shall be Ex Works.

4.2.

The risk for accidental damage to the equipment will pass to Purchaser upon delivery.

4.3.

Delayed delivery irrespectively of such delay being caused by Clemco or not does not entitle the Purchaser to cancel an order unless a delay exceeds two (2) consecutive months.

5. PAYMENT - RETENTION OF TITLE

5.1.

Payment shall be made in EUR on the terms specified in Clemco's acceptance of quotation.

Payment shall be made not later than 30 days after the date of invoice. Clemco is entitled to interest of 2 % per commenced month.

5.2.

Unless otherwise agreed by the parties in textual form payment shall be made as follows: Bank S.W.I.F.T. to Clemco's bank account in Germany.

5.3.

The delivered goods shall remain the property of Clemco until payment has been made in full. The validity of such retention of title in relation to third parties is governed - as opposed to article 10 - by the rules of the country of the purchaser.

Bills of exchange or instruments of debt or any of the like shall not be considered as payment until fully paid.

6. DEFECTS

6.1.

In the event of a delivery being defective Clemco undertakes for a period of twelve months after delivery at its own discretion to remedy such defects or to deliver a new product or to pay compensation.

6.2.

Defects due to improper storage, insufficient maintenance, incorrect installation by the Purchaser or other third parties, modifications carried out without Clemco's textual consent, incorrect or inexpedient repairs made by the purchaser or other third parties, inappropriate use, including use contrary to Clemco's manuals or technical specifications, faulty or negligent handling by the Purchaser, normal wear and tear, are of no consequence to Clemco.

6.3.

Purchaser shall grant Clemco the time and opportunity after consultation with Clemco to carry out all repairs and supply all replacements, at Clemco's discretions, otherwise Clemco shall be released from all liability for the defects.

6.4.

Clemco undertakes the same obligations concerning replaced or repaired parts according to 5.1. as apply to the original delivery for a period of 12 months. This does not apply to other parts of the delivery for which the period as mentioned in art. 5.1. is only extended by the period in which the delivered product has been out of use due to defects.

6.5.

Clemco's obligations are exclusive of shipping costs and the cost of field labour for removing and reinstalling such parts or equipment.



6.6.

Replaced defective parts are to be returned to Clemco for the account of the Purchaser. Such parts are considered as Clemco's property.

6.7.

Clemco transfers the warranty received from vendors of items outside design and manufacture, such as motors and controls.

7. INSTALLATION AND INSTALLATION SUPERVISION

7.1.

In the event that Clemco provides installation (erection) or installation supervision as part of the contract, the premises in which the installation is to be made must be entirely at Clemco's disposal during the installation period. In the event of delay or interruption of installation beyond the control of Clemco, extra expenses, which may then be incurred will be borne by Purchaser and these delays will automatically extend any performance dates listed in the contract by an equivalent amount of time.

7.2.

Purchaser shall receive arriving equipment and supplies and store them in a suitable place protected from the elements. Should the unloading and storage area be other than the actual installation site, Purchaser has the responsibility to bring the equipment and supplies to the job site for installation.

7.3.

Purchaser shall furnish all utilities required during installation such as electric power, steam, water, light, heat and compressed air, tool/instruments and installation equipment.

Purchaser shall also provide Clemco with a locker room for small tools and instruments as well as an office with access to telephone/fax.

8. COMMISSIONING

8.1.

If commissioning assistance is included in the contract, Purchaser will provide sufficient numbers of qualified personnel for training purposes and for operating the equipment during commissioning. Purchaser will furnish all raw materials, utilities and supplies required during commissioning and will provide timely and accurate laboratory services if required. Delays by Purchaser in fulfilling its duties during commissioning will postpone any performance dates guaranteed by Clemco by at least an equivalent amount of time and may involve a rescheduling of commissioning due to personnel scheduling conflicts.

8.2.

In no event is the equipment to be used commercially until after the completion of commissioning and receipt by Clemco of final payment. Operation of the equipment by Purchaser for commercial production shall signify full acceptance of the equipment by Purchaser and shall serve to release Clemco from any further obligations in terms of performance and product guarantees. Notwithstanding any other provision of the contract, full payment of the contract shall be immediately due and payable to Clemco upon the commercial operation of the equipment.

9. LIABILITY FOR DEFECTS, DELAYS OR NON - DELIVERIES

9.1.

Clemco is not liable for defects or costs caused by delayed delivery, non-delivery or defective deliveries unless it is established that such delivery, non-delivery or defects is due to negligence on the part of Clemco.

9.2.

In the event that Clemco is liable according to art. 6.1. Clemco has no liability for indirect loss of any kind, loss of profits, loss suffered by third parties or any consequential damages.

Liability for defective deliveries can under no circumstances exceed the invoice value of delivered products.

Liability for delay in delivery can under no circumstances exceed 5 % of the invoice value of delivered products.



10. COMPLAINTS

10.1

Claims or objections concerning circumstances in respect to the delivery must be forwarded to Clemco within 8 days after receipt of the delivery in order to be considered.

Claims or objections concerning defects will only be considered if they are forwarded to Clemco without undue delay after the defect has been or should have been discovered by the Purchaser.

10.2.

If the Purchaser forwards a claim or objection concerning a defect and it is later established that the delivery was not defective in any way for which Clemco can be held liable Clemco is entitled to a compensation for the work, efforts and costs such a claim or objection has incurred.

11. TAXES AND FEES

11.1.

Unless otherwise specified, all taxes, duties, permits and inspections will be paid by Purchaser. These includes, but are not limited to: sales- value added, property, use, privilege, occupation and excise taxes; import duties and surcharges; building and operating permits; and other registration and inspection fees.

12. PRODUCT LIABILITY

12.1.

Clemco is not liable for damage to real property or movables unless it is established that such damage to real property or movables is due to gross negligence on Clemco's part or others for whom Clemco is liable.

12.2.

Clemco is under no circumstances liable for personal injury or other damages as mentioned in Clause 12.1. above if such personal injury or other damage are due to use of the delivered products contrary to Clemco's manuals or technical specifications or are due to negligent acts on the part of others than Clemco i.e. sub-suppliers or independent contractors, etc.

12.3.

Clemco is under no circumstances liable for indirect loss, loss of profits, or any other kind of consequential loss.

12.4.

In the event that Clemco is held liable according to the rules in the present article concerning product liability in relation to a third party, Purchaser is obliged to indemnify Clemco from all claims to the extend that Clemco has limited its liability according to Clause 12.1. through 12.3.

12.5.

If a third party should claim damages from one of the contracting parties in respect to a delivery made under these General Conditions, this party is obliged to inform the other party with the utmost dispatch.

13. BANKRUPTCY

13.1.

In the event that insolvency or bankruptcy action is begun by or against the Purchaser, Clemco at its option may terminate the contract by textual notice to the Purchaser in which event all sums paid to Clemco by Purchaser under the contract shall be retained by Clemco as partial liquidated damages and not as a penalty. If Clemco does not elect to terminate the contract, the entire contract price shall become immediately due and payable to Clemco and Clemco's performance under the contract shall be excused and extended until such payment has been made. In all events, the trustee in bankruptcy, assignee for the benefit of creditors or similar person shall observe and be bound by all contract provisions, including these terms and conditions.



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14. FORCE MAJEURE

14.1.

Any delay in or failure of performance of either party shall be considered as cases of relief of responsibility to the extent that such delay in or failure of performance are caused by occurrences after the acceptance of the quotation and are beyond the control of the party affected including, but not limited to:

Industrial disputes, fire, war, general mobilization of unforeseen military mobilizations, requisition, general shortage of materials, shortage of transport, civil commotion, import bans or export bans, restrictions in the use of power and defects, or delays in deliveries by sub-suppliers.

Rene Böttrich; Bruckmühl/ Germany, March 2018
General Manager
Clemco International GmbH