

Terms & Conditions

1. Preamble

- 1.1. These General Terms and Conditions shall apply, unless the Contracting Parties have expressly agreed otherwise in writing.
- 1.2. The following provisions concerning the delivery of goods also apply mutatis mutandis to rental and services.

2. Conclusion

- 2.1 The contract is only deemed to be concluded if drillwerk has sent a written order confirmation after receipt of the order and the customer is not contradicted by the buyer within 10 days.
- 2.2 Amendments and additions to the contract require a written confirmation from drillwerk. Purchasing conditions of the buyer are binding for drillwerk only if these are acknowledged by drillwerk separately in writing.
- 2.3 If import and / or export licenses or foreign exchange permits or similar authorizations are required for the execution of the contract, the party responsible for the procurement must make every reasonable effort to obtain the required licenses or permits in time.

3. Plans and documents

- 3.1 The information on weight, dimensions, capacities, price, performance, etc., contained in catalogs, prospectuses, circulars, advertisements, illustrations and price lists etc., Are only relevant if the offer and / or the order confirmation expressly refers to them.
- 3.2 Plans, sketches, cost estimates and other technical documents as well as samples, catalogs, brochures, illustrations, which may also be part of the offer remain always and the intellectual property of drillwerk. Reproduction, reproduction, distribution and distribution to third parties, publication and presentation may only be carried out with the express approval of drillwerk. Infringements of these provisions and violations of the intellectual property of drillwerk are punishable by the law of damages and are additionally asserted by court with a penalty payment of EUR 250,000.00.

4. Packing

- 4.1 Unless otherwise agreed:
 - a) the prices quoted are without packaging;
 - b) the goods are packaged according to normal trade practice in order to avoid, under normal transport conditions, any damage to the goods on the way to their agreed destination. The goods are packaged at Buyer's expense, and the packaging material will only be taken back if so agreed by the parties.

5. Passage of Risk

- 5.1 Unless otherwise agreed, the goods shall be deemed to have been sold "ex works" (EXW) (ready for collection).
- 5.2 Furthermore, the INCOTERMS shall apply in the version valid on the date when a contract is signed.

6. Period of Delivery

- 6.1 Unless otherwise agreed, the delivery period begins with the latest of the following dates:
 - a) Date of the order confirmation;
 - c) the date on which Buyer has complied with all technical, commercial and financial preconditions for which Buyer is responsible under the contract;
 - d) the date on which drillwerk has received a payment on account that is due prior to the delivery of the goods, and/or a payment guarantee has been issued or otherwise provided.
- 6.2 drillwerk shall have the right to make partial or advance deliveries.
- 6.3 If a delivery is delayed on account of a circumstance on drillwerk's part that constitutes a reason for relief according to Article 14, a reasonable extension of the period of delivery shall be granted.
- 6.4 If drillwerk has caused a delay in delivery, Buyer may either demand the performance of the contract or withdraw from the contract, granting a reasonable respite.
- 6.5 If the respite according to Article 6.4 is not used, due to drillwerk's negligence, Buyer may withdraw from the contract by means of a written notice, regarding the undelivered goods. The same shall apply to already delivered good which, however, cannot be used appropriately without the outstanding goods. In this event, Buyer shall have the right to be refunded any payments made for undelivered goods or for the goods that cannot be used. Moreover, in the event that the delay in delivery is due to a gross negligence on drillwerk's part, Buyer shall be entitled to a refund of any justified expense that Buyer has had to incur up to the dissolution of the contract and which cannot be used for any further purpose. Buyer shall return to drillwerk any delivered goods and the goods that cannot be used.

- 6.6 If Buyer does not accept the goods supplied under the contract in the contractually agreed place or at the contractually agreed time, and if the delay is not due to any action or omission on drillwerk's part, Drillwerk may either demand the performance of the contract or withdraw from the contract, granting a respite.

When the goods have been segregated, Drillwerk may store the goods at Buyer's cost and risk. Drillwerk shall also be entitled to claim a refund of any justified expenses that Drillwerk had to incur in connection with performing the contract and that are not covered by the payments received.

- 6.7 Any other claims of Buyer against drillwerk for drillwerk's delay than those listed in Article 6 shall be precluded.

7. Acceptance Test

- 7.1 If Buyer wishes to have an acceptance test made, such a test shall be agreed expressly in writing with Drillwerk when entering a contract. Unless otherwise agreed, the acceptance test shall be made at the place of manufacture, or at a place to be indicated by Drillwerk respectively, during the normal working hours of Drillwerk. In this connection, the general practice of the industry in question shall govern the acceptance test.
drillwerk shall inform Buyer in due time of the acceptance test so that Buyer may be present during the test, or may be represented by an authorized representative respectively.

If the delivery item proves to be contrary to the contract during the acceptance test, drillwerk shall remedy any defect immediately and produce the contractual condition of the delivery item. Buyer may ask that the test be repeated only in cases of a major defect.

An acceptance record shall be drawn up following the acceptance test. If the acceptance test has demonstrated that the delivery item has been manufactured according to contract and operates properly, the two contracting parties shall confirm this at any rate. If Buyer or Buyer's authorized representative is not present during the acceptance test, in spite of having been informed thereof in due time by drillwerk, only drillwerk shall sign the acceptance record. In any event, Drillwerk shall send Buyer a copy of the acceptance record, the correctness of which Buyer may not contest, not even in those cases where Buyer or Buyer's authorized representative was unable to sign it for lack of attending the test.

- 7.2 Unless otherwise agreed, drillwerk shall bear the costs for performing the acceptance test. Buyer shall, however, bear any costs incurred by Buyer or Buyer's representative in connection with the acceptance test, such as, for example, travel expenses, per diems or similar expenses.

8. Price

- 8.1 Unless otherwise agreed, all prices shall be ex works of Drillwerk without loading.
- 8.2 The prices shall be based on the costs at the time of the quotation, unless otherwise agreed. In the event that costs change during the period until delivery, these changes shall be in favor, or at the expense of Buyer respectively.
- 8.3 The provided prices are not binding and can be adjusted with in the order confirmation. Prices are subject to quality and quantity. Special productions are calculated on request and in principle are only produced against prepayments and cannot be returned.

9. Payment

- 9.1 The payments shall be made in keeping with the agreed conditions of payment. Unless specific conditions of payment have been agreed upon, one third of the price shall be due upon receipt of the order confirmation, one third after half of the delivery period has lapsed, and the rest upon delivery. Irrespective of the foregoing, the value-added tax included in the invoice shall be paid within 30 days after the invoice date, at the latest, in all events.
- 9.2 Buyer shall not have the right to withhold payments due to warranty claims or any other counter-claims that Drillwerk has not accepted.
- 9.3 If Buyer defaults on one of the agreed payments or any other performance, Drillwerk may either insist on the performance of the contract and
 - e) postpone compliance with drillwerk's own obligations until Buyer has paid the arrears in payment or provided any other performance,
 - a) use a reasonable extension of the period of delivery,
 - b) call for the payment of the full remaining purchase price,
 - f) charge interest on arrears, as of the due date, in the amount of 9,58 % above the respective base rate of the European Central Bank (EURIBOR), unless Buyer can claim a reason for relief under Article 14,
 or announce the withdrawal from the contract, granting a reasonable respite.
- 9.4 In all events, Buyer shall refund to drillwerk the dunning charges and collection costs which constitute a further damage caused by the delayed performance.
- 9.5 If Buyer has not made the payment due or provided any other performance within the respite according to 9.3, Drillwerk may withdraw from the contract by means of

- a written notice. Buyer shall return to Drillwerk, upon drillwerk's request, any delivered goods and compensate Drillwerk for any reduction in the value of the goods that has occurred, as well as refund to drillwerk all justified expenses that Drillwerk had to incur in connection with the performance of the contract. Regarding undelivered goods, drillwerk is entitled to make available to Buyer the completed parts, or the parts with incipient processing respectively, and ask for a pro-rated part of the sales price.
- 9.6 Payment obligations, especially the established values of the money shall be deemed to have been agreed in euro. In all events, any conversion will be made on the basis of the officially established exchange rates.
- 10. Reservation of Ownership**
- 10.1 drillwerk shall reserve the ownership in the object sold until Buyer has met all financial obligations. Drillwerk is entitled to document drillwerk's ownership on the outside of the delivery item. Buyer shall comply with the required formal regulations to safeguard the reservation of ownership. In case of an attachment or any other recourse, Buyer shall be obliged to claim drillwerk's ownership and to inform the latter without delay.
- 11. Warranty**
- 11.1 Subject to the below provisions, drillwerk shall undertake to remedy any defect affecting the fitness for use which is due to a deficiency in design, material or workmanship. Drillwerk shall also be responsible for any defects concerning expressly requested properties.
- 11.2 The above obligation shall only apply to such defects that appear within a period of one year, when working a one-shift operation, as of the passage of risk, or as of the completed assembly, in case of a delivery with assembly respectively.
- 11.3 Buyer may claim the present article only if he informs Drillwerk in writing and without delay of any defects that have appeared. Once Drillwerk has been informed of defects in this way, Drillwerk shall – if the defects must be remedied according to the provisions of the present article – at drillwerk's choice:
- rework the defective goods on site;
 - have the defective goods or the defective parts shipped back for reworking;
 - replace the defective parts;
 - replace the defective goods.
- If there is a defect, drillwerk is entitled to remedy the defect according to drillwerk's choice of a repair at drillwerk's expenses or a replacement delivery. If drillwerk is not willing or unable to rectify this defect, in particular, this is delayed beyond reasonable periods for reasons that drillwerk is responsible for, or if at least two attempts at rectification are unsuccessful, the buyer is entitled to withdraw from the contract or reduce the remuneration. If Drillwerk arranges for the defective goods or parts to be returned to Drillwerk for the purpose of reworking or replacement, Buyer shall bear the costs and the risk of the transport, unless otherwise agreed. The re-shipment of the reworked or replaced goods or parts to Buyer shall be at drillwerk's costs and risk, unless otherwise agreed.
- 11.4 The defective goods or parts, which are replaced according to the present article, shall be at drillwerk's disposal.
- 11.5 drillwerk shall only refund any costs for remedying a defect, undertaken by Buyer himself, if drillwerk has explicitly agreed to this procedure in writing.
- 11.6 drillwerk's warranty obligation shall only apply to defects that appear when observing the applicable operating conditions and putting the item to normal use. His obligation shall, in particular, not apply to defects that are due to inadequate installation on the part of the Buyer or Buyer's representative, inadequate maintenance, inadequate repairs or modifications undertaken by other persons than Drillwerk or Drillwerk's representative without the written agreement of Drillwerk, normal wear.
- 11.7 drillwerk shall be liable for those parts of the goods that drillwerk obtained from subcontractors prescribed by Buyer only to the extent of drillwerk's own warranty claims vis-à-vis the sub-contractor.
- If drillwerk produces items on the basis of Buyer's design data, drawings or models, drillwerk's liability shall not extend to the accuracy of the design but as to whether the workmanship complies with Buyer's instructions. In such cases, Buyer shall keep drillwerk harmless and free from any court action, in the event of an infringement of proprietary rights.
- When accepting repair jobs or reworking or modifying old as well as third-party goods, or when delivering second-hand goods, Drillwerk shall not accept any warranty.
- 11.8 As of the beginning of the warranty period, drillwerk shall not accept any liability that extends beyond the scope defined in the present article.
- 12. Liability**
- 12.1 It is expressly agreed that Drillwerk shall not be liable to Buyer for damages in the event of personal injuries, or for damage to goods that are not the subject of the specific contract, as well as for other damage and loss of profit, unless the circumstances of a specific case reveal that drillwerk acted with gross negligence.
- 12.2 The purchased object provides only that level of safety that may be expected on the basis of the registration provisions, the operating instructions, drillwerk's rules on the handling of the purchased object – especially with regard to any possible inspections and other instructions given.
- 12.3 For cases of drillwerk's minor negligence, the damages are limited to 5 % of the order amount, or EUR 10,000 as a maximum.
- 12.4 All claims for damages due to defects in deliveries and/or performances must be filed in court within one year after the expiry of the contractually agreed warranty period if drillwerk does not expressly accept the defect; otherwise all claims become extinct.
- 13. Consequential Damage**
- 13.1 Subject to any provisions of a different effect in the present Terms, drillwerk's liability vis-à-vis Buyer shall be precluded for any standstill in production, loss of profit, loss of use, loss of contract or any other economic or indirect consequential damage.
- 14. Reasons for Relief**
- 14.1 The parties shall be released in part or in total from the timely performance of the contract if they are prevented by events of force majeure. Events of force majeure shall solely be such events that the parties are unable to foresee and avoid and that are beyond their domain. However, strike and industrial dispute shall be considered to be events of force majeure. A Buyer affected by an event of force majeure may, however, only claim the existence of force majeure if Buyer informs drillwerk without delay, at the latest, though, within 5 calendar days, about the onset and anticipated end of an obstruction, by sending by registered mail a statement, confirmed by the respective government authority or chamber of commerce of the delivery country respectively, on the reason, the anticipated effects and the duration of the delay.
- In the event of a force majeure, the parties shall make every effort to remove, or to mitigate respectively, the difficulties and the anticipated damage, as well as to keep the respectively other party continuously informed thereof; otherwise they shall be liable to pay damages to the respectively other party.
- Deadlines or dates that cannot be observed on account of events of force majeure shall be extended by the duration of such events of force majeure, as a maximum, or, if applicable, by a period to be determined by mutual consent. If a circumstance of majeure prevails by more than four weeks, Buyer and drillwerk shall seek a solution for handling the technicalities of its effects by means of negotiations. If no solution can be reached by mutual consent, drillwerk may withdraw from the contract in part or in total.
- 15. Data Protection**
- 15.1 drillwerk shall have the right to store, to communicate, to process and delete person-related data of Buyer in the framework of their business relations.
- 15.2 The parties shall undertake to keep absolutely confidential vis-à-vis third parties any knowledge obtained in the course of their business relationship.
- 16. Place of Jurisdiction, Applicable Law, Place of Performance, Language**
- 16.1 The place of jurisdiction for all disputes arising directly or indirectly from a contract shall be the relevant German court with competences for drillwerk's principal place of business. drillwerk may, however, also resort to the court with jurisdiction for Buyer
- 16.2 The parties may agree that an arbitral tribunal has jurisdiction.
- 16.3 Contracts shall be subject to German law to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980, Federal Law Gazette No. 1988/96..
- 16.4 drillwerk's principal place of business shall be the place of performance for deliveries and payments, also in the event that the transfer is agreed to be in different place.
- 16.5 In the event of disputes arising from the present certified translation of the contract, the German text shall prevail.