

Standard Business Conditions of the Phoenix Pure Water International GmbH

§ 1 Scope

- (1) The following Standard Business Conditions („SBC“) apply to contracts with companies (“Customer“) by the *Phoenix* Pure Water International GmbH, Bruchsal, (“*Phoenix*“) in terms of § 14 BGB (= Code of German Federal Regulations).
- (2) The contractual relationship between the Customer and *Phoenix* conforms with the said SBC. Any divergent terms of business by the Customer are hereby explicitly rejected. Said SBC apply solely even in case that *Phoenix* unconditionally renders goods or services to the Customer in full knowledge of the Customer’s conflicting or divergent terms of business. In case that both *Phoenix* and the Customer have concluded a separate agreement regarding work performance which separately governs specific features of a construction project, the provisions thereof will precede.
- (3) Said SBC shall be taken as a basis subject to other provisions or future contract considerations of SBC amendments as well as future supply, goods and services agreements between *Phoenix* and the Customer without requiring a renewed inclusion.

§ 2 Conclusion of Contract

- (1) Insofar as nothing else ensues from the circumstances, requests for quotations by *Phoenix* merely represent requests to the Customer to submit definitive contract offers („*invitatio ad offerendum*“).
Phoenix is entitled to accept Customer contract offers within three weeks. During this time period, the Customer is bound to his agreement declarations.
- (2) Contract offers by *Phoenix* are, unless otherwise stated in the contract offer, subject to change and may be revoked prior to final inspection by the Customer at any time.
- (3) For purpose of proof, any and all agreements reached between *Phoenix* and the Customer must be documented in writing.

§ 3 Contents of Contract and Scope of Supply and Services

- (1) For the contents of contract as well as the scope of supply and services, a written order confirmation by *Phoenix* is binding. In the case of a contract offer with a limited commitment and an acceptance in due time on part of *Phoenix*, the quotation is binding, provided that there has been no order acknowledgement. The contents of contract also include technical data sheets.
- (2) *Phoenix* claims proprietorship as well as copy right to any quotations, drawings and other documents including those in electronic format. They may not be reproduced or made accessible to third parties without the approval by *Phoenix* and must be returned or destroyed immediately on demand. Even after receipt of a delivery, an absolute obligation to maintain secrecy regarding the constructional details versus any third parties remains in force on part of the Purchaser.

§ 4 Pricing

- (1) Unless provided otherwise by the order confirmation, all prices are net (excluding value added tax) ex *Phoenix* registered office excluding packaging, insurance, shipping.
- (3) Discounts will be granted to the Customer only upon successful transaction of the business. They will lapse as a result of
 - bankruptcy proceedings being filed against the assets of the purchaser,
 - the purchaser not settling the account within the prescribed time frame, or
 - pending legal action between the purchaser and our company as a result of or in connection with this agreement.

§ 5 Terms of Payment

- (1) The Customer is obligated to fulfill any payment claims due to *Phoenix* promptly and strictly net unless otherwise agreed upon beforehand or in the event of any existing rights to refuse goods and services. Any discounts must be agreed upon in writing beforehand.
- (2) Insofar as *Phoenix* should in this particular case, additionally render goods and services which exceed a work supply according to § 651 BGB, the payment date shall occur at the time of the final inspection of the work performance. Partial payments shall be granted upon request at preferably short intervals or within the time frames initially agreed upon, i. e. in the amount of the value of the respectively verified and contractually agreed upon work performed which includes the designated applicable amount of value added tax. The performance must be demonstrated via a verifiable itemization which enables a quick and definite assessment of the goods and services. Goods and services also include any specially fabricated and appropriated components as well as those materials and components delivered to the construction site, in the event that ownership has been assigned to the Purchaser at his option or if an appropriate security is provided.
- (3) Set-off rights for the Customer apply only if the Customer's counterclaims have been legally affirmed and are uncontested or acknowledged by *Phoenix*. In the event of contested or not legally affirmed counterclaims, the Customer shall not be entitled to any liens.

§ 6 Default of Payment

The Customer will be – subject to an earlier reminder - considered defaulted, at the latest eight days after the payment due date and receipt of an invoice or a equivalent payment request in default.

§ 7 Liability for Damages on Part of the Customer instead of Work Performed

In the event that *Phoenix* is entitled to a claim for damages in place of work performed by the Customer according to legal requirements, this claim shall amount – without regard to any work already performed and subject to proof of a greater damage by *Phoenix* – to a blanket 25 % of the agreed compensation. The Customer is entitled to substantiate that no damage has occurred at all or that the damage is substantially lower than the blanket rate.

§ 8 Terms, Damage Caused by Delay

- (1) Delivery terms stipulated are considered approximate. It is understood that all commercial and technical issues have been clarified between the contracting parties.
- (2) Compliance with a delivery commitment on part of *Phoenix* implies the timely and proper fulfillment of the Customer's obligations.
- (3) In case of unexpected events, which *Phoenix* cannot be held liable for, delivery terms are extended ,even if they occur (at the plant or) at a sub-contractor's site, for the full term of the disruption. This particularly applies to the following issues: Operational malfunctions, legitimate strikes or lock-outs by either *Phoenix* or one of our suppliers, delivery delay of essential raw materials. Irrespective of any other rescission rights by the Customer, the same is entitled to the right of withdrawal from this contract if the duration of the impediment to the goods and services exceeds a period of three months.
- (4) In the event that delivery is not possible for reasons described in Sections 2 and 3 and shall exceed three months for an incalculable period of time for which *Phoenix* cannot be held liable, *Phoenix* is entitled to withdraw from the contract.
- (5) Failure to comply with the delivery dates and terms under consideration of an extension according to Sections 2 and 3, entitle the Customer to enforce his due rights, in particular the right of withdrawal, however, not until the Customer has provided *Phoenix* in writing with an adequate final deadline of no less than 14 days.
- (6) Claims for damages due to default are limited to an amount of 0,5% of the agreed net compensation per default week commenced, up to 5% of the agreed net compensation, unless it can be substantiated that *Phoenix* acted with intent or with gross negligence.

§ 9 Delivery, Transfer of Risk

- (1) Unless provided otherwise by the order confirmation, delivery, „ex works“ is applicable. Partial deliveries are admissible if feasible for the customer.
- (2) The delivery term is maintained as soon as the delivery item leaves the *Phoenix* site by the time of the term's expiration or as soon as deliverability is reported. In the event that a final inspection is to take place, the final inspection date is decisive – unless there is a legitimate case to refuse the final inspection, or alternatively the notification of the final inspection.
- (3) In the event that shipment or the final inspection of the delivery item are delayed due to reasons caused by the Customer, any expenses incurred by this delay are charged to the Customer beginning one month after notification of the shipping or inspection readiness.
- (4) In order to ascertain a smooth assembly and start-up process, the Customer shall fulfill the conditions listed hereunder in a timely manner and at own risk and expense, unless otherwise provided for in the contract.
 - The installation location must be set up to enable the uninterrupted assembly as well as provide for the safety of the technicians in order to avoid unhealthful and hazardous working conditions;
 - the mechanical connections of the delivery items to the interfaces at the Customer's site (particularly water supply, power supply, telephone system ports) must be accessible by the start of assembly;

- for purposes of starting up the system, the required product must be ready on hand. If multiple products are to be processed, the start-up of the system must be able to take place on consecutive days as well as ensure the designated capacity of the machines which is imperative for the effective alignment of the control mechanisms. If this should not be possible by the date of the start-up, additional required journey times as well as charges for waiting time will be expensed separately;
 - during assembly times, the Customer provides for a theft-proof storage of tools and materials by *Phoenix*; in case of loss by theft through no fault of *Phoenix*, the Customer shall be liable for the loss.
- (5) Assembly times as well as the implementation and completion of the work by the technicians of *Phoenix* must always be documented on the work performance records to be presented. In the event that these verifications are not signed by the Customer, the records by the *Phoenix* technicians will be taken as a basis. Any work performed which exceeds the size of the order will be separately listed and charged.
- (6) The risk of accidental perishing or deterioration of the contractual item will be passed over to the Customer (at the latest) upon delivery to the Customer, or respectively, by the start of loading the delivery items on the *Phoenix* site. This also applies when *Phoenix* has assumed shipment based upon an additional agreement and even if the shipping takes place via *Phoenix's* own vehicles and employees. In the event that delivery, or respectively the loading, is delayed by request of the Customer, the risk will pass over to the Customer at the time of notification of deliverability. If the Customer requests to do so, *Phoenix* will take out cargo insurance on the delivery item, the costs of which are carried by the Customer.

In the event that in this specific case, *Phoenix* also renders work performance, which exceeds the work supply according to § 651 BGB and which results in an inspection, the same is decisive for the transfer of risk of the work performance.

- (7) Transport packaging as well as any other packaging in accordance with the requirements of the Packaging Regulations will not – with the exception of pallets – be taken back. The Customer is obliged to dispose of the packaging at his own expense.

§ 10 Content and Quality of the Goods and Services

- (1) The content and quality of the goods and services by *Phoenix* is based upon the contractual agreements.
- (2) Unless expressly stated otherwise, *Phoenix* will not assume any guarantee irrespective of the party at fault for the content and quality of the goods and services. This also applies in reference to the DIN-standards.
- (3) Variations in the implementation, materials, colors and dimensions of the contractual item do not entitle the customer to a warranty claim, if the value or capability of the purchased item in terms of the general or contractually stipulated use, is only insignificantly impaired.
- (4) No warranty will be assumed for the following cases:
 unsuitable or improper use, faulty assembly or start-up by the Customer or third parties, wear and tear, faulty or neglectful treatment, improper maintenance, unsuitable equipment, inadequate construction work, unsuitable building area, chemical, electro-chemical or electrical impacts - unless caused by *Phoenix*.

- (5) The question regarding the compliance with pertinent technical regulations and norms depends on the version on the day of the order.

§ 11 Requirement to Give Notice of Defects

Deliveries shall immediately be examined by the Customer upon receipt or be examined by the recipient designated by the Customer. Following the unconditional acceptance of the goods by the Customer or the person designated by the Customer, any subsequent claim based upon the external appearance of the delivery is rejected. Any other product defects, as far as recognizable, must be reported within 7 days after receipt, generally only within 7 days after detection. Notifications of defects must be made in writing.

§ 12 Acceptance of Work Performed

(1)

In the event that in the specific case, *Phoenix* has also rendered goods and services which exceed the work delivery according to § 651 BGB, the following applies:

- (1) If *Phoenix*, upon completion, requests final inspection of the work performed, the Customer shall comply within 5 working days. On demand, self-contained portions of the goods and services must be particularly inspected. In the event of fundamental defects, inspection may be refused until they have been rectified.
- (2) If no inspection is requested, the goods and services are presumed to have been inspected upon conclusion of 12 working days and following a written notification regarding the completion of the goods and services.
- (3) If no inspection is requested and if the Customer has already put the goods and services or portions thereof into use, the inspection is presumed to have been taken place upon conclusion of 6 working days after start of use, unless otherwise agreed upon.

§ 13 Warranty Claim

- (1) Irrespective of any claims for damages by the Customer according to the provisions of § 13, *Phoenix* will, initially per own choice, provide warranty via either a replacement delivery or rework of the contractual item delivered („supplementary performance“). This applies only if the defects are reported in a timely manner and if the value or the useability is considerably limited. *Phoenix* is obligated to carry all required expenditures such as shipping, road, labor and material costs unless these have been raised by the fact that the contractual item was taken to another location than the initial place of fulfillment.

The delivery of a replacement product takes place exclusively in conformance with the original product's warranty obligations. Therefore, irrespective of the warranty rights pertaining to the first delivery, the Customer is not entitled to warranty rights in case of a defective replacement delivery and the the warranty period will not be restarted thereby.

In order to carry out any and all required rework and replacement deliveries, the Customer shall grant, upon agreement with *Phoenix*, the required time and opportunity; otherwise, *Phoenix* will be exempt from the liability for any consequences arising thereof.

- (2) In the event of a supplementary performance, the Customer is entitled to either reduce the agreed price or to withdraw from the contract, however, only after a two-time failure.
- (3) In any cases concerning § 438 Abs. 1 Nr. 2b (delivery of an item which was used according to its intended purpose for a structure), the statute of limitation period is reduced to 24 months. Excluded hereof are all cases concerning § 309 Nr. 7 BGB (harm to life, body, health or a grossly negligent and deliberate breach of duty) as well as in cases of breach of a contractual obligation essential for the execution of the contract.

For any other deliveries, the statute of limitation period according to § 438 Abs. 1 Nr. 3 (2 years) is applicable.

The statute of limitation period for claim of defects for contractual work services by *Phoenix* amounts to 2 years according to § 634a Abs. 1 Nr. 1 BGB. In case that goods and services are rendered for a structure, the statute of limitation period is reduced to 2 years according to § 634a Abs.1 Nr. 2. Excluded hereof are any and all cases concerning § 309 Nr. 7 BGB (harm to life, body, health or grossly negligent and deliberate breach of duty) as well as in cases of breach of a contractual obligation essential for the execution of the contract.

§ 14 Liability

- (1) As a rule, liability is limited to deliberate or grossly negligent damages caused by *Phoenix* or its agents. In cases of slight negligence, *Phoenix* is liable only in cases of harm to life, body or health as well as in cases of breach of a contractual obligation essential for the execution of the contract.
- (2) In case of *Phoenix* being liable due to slight breach of duty only, liability is limited to the amount of generic damages as laid out in the contract, and which were foreseeable at the time of contract conclusion or at the latest, at the time the breach of duty was committed. The statute of limitation period for claims by the Customer is set at 12 months beginning with the passing of risk. The preceding provisions do not apply if harm to life, body or health has occurred.
- (3) Claims to damages which by law, imply no fault, remain unaffected by the provisions as laid out in Section (1) and Section (2).

§ 15 Termination of Claims to Delivery/Supplementary Performance

- (1) In cases where the Customer is entitled, on the one hand, to demand delivery or supplementary performance from the seller and on the other hand, to withdraw from the contract, to demand compensation for damages instead of goods and supply and/or reimbursement of expenses, *Phoenix* may call on the Customer to exercise his rights within an adequate period.
- (2) In the event that the purchaser chooses not to exercise his rights in due time, *Phoenix*, irrespective of any other rights of the Customer, is no longer obligated to provide delivery or supplementary performance.

§ 16 Retention of Title

- (1) Any deliveries take place subject to retention of title. The goods delivered remain property of *Phoenix* until all current claims against the Customer in the property of *Phoenix* have been settled in full. In case that additional claims arise from further receivables from the business relationship before the complete repayment of the present claim was carried out, the retention of title will not cease until all claims have been settled in full. This also applies if claims by *Phoenix* are in-

cluded into a current invoice and the claims per se are submerged via balancing and accepting. The retention of title serves as security for the claim against the account balance.

The Customer is obligated to insure the delivery item against theft, breakage, fire, water and other damages at his own expense. *Phoenix* is entitled to insure the delivery item in the aforesaid manner at the Customer's expense, in case the Customer has not verifiably acquired insurance himself already.

- (2) In case of foreclosure actions or any other interventions by third parties on the goods subject to retention of title, the Customer must inform *Phoenix* immediately by handing over the documents required for such an action. In case that the third party is unable to reimburse *Phoenix* for the legal and out of court costs, the Customer shall be liable for any disruptions caused to *Phoenix*.

§ 17 Place of Execution

Unless otherwise agreed upon in the General Terms and Conditions, the place of execution for any and all mutual obligations is the place of business of *Phoenix*.

In the event that *Phoenix* has, in this specific case, also rendered work performance which exceeds work a supply according to § 651 BGB, the place of execution shall be the contractually agreed upon location of the work rendered.

§ 18 Place of Jurisdiction

The place of jurisdiction for any and all disputes involving *Phoenix* and domestic customers regarding or in conjunction with this contract is the place of general jurisdiction of *Phoenix* or at our option, the general or a special place of jurisdiction of the Customer, if the Customer is a registered merchant, a legal entity or a special public fund and the legal dispute concerns neither a non-proprietary claim which was assigned to district courts without consideration to the value of the matter in dispute, nor is it based on an exclusive place of jurisdiction. The same applies to disputes involving *Phoenix* and foreign Customers.