

General Terms and Conditions for Sale of ICS Cool Energy GmbH

For use in business transactions between entrepreneurs

1. General Information

- 1.1. These General Terms and Conditions of Sale (GTC) apply to all sales contracts with our customers. They also apply to all future deliveries, services or offers to the customer in connection with a purchase contract, even if they are not agreed again separately.
- 1.2. The general terms and conditions of the customer or third parties shall not apply, even if we do not individually object to their validity. Even if we refer to a letter that contains or refers to the general terms and conditions of the customer or a third party, this does constitute an acceptance of this terms and conditions.
- 1.3. Individual agreements with the customer (including collateral agreements, additions and amendments) which have been made in an individual case shall in any case take precedence over these GTC. For the content of such agreements a written contract or our written confirmation shall be decisive.
- 1.4. Regulatory or other approvals must be provided by the customer at his expense. The customer bears also our costs, if we assist the customer in this regard.
- 1.5. Legal declarations and announcements, which the customer has to give towards us after conclusion of the contract (e.g. setting of deadlines, notice of defects), require written form.
- 1.6. The statutory provisions apply insofar as they are not directly modified or expressly excluded in these GTC. The contract procedures for construction work ("Vergabe- und Vertragsordnung für Bauleistungen", VOB) do not apply.

2. Conclusion of Contract

- 2.1. Our offers are binding, unless they are expressly marked as non-binding. Documents such as illustrations, drawings, data sheets are only roughly accurate in respect to dimensions and weight, as far as accuracy is not expressly confirmed in writing. The same applies to information contained in a brochure, catalogue or our internet presence. Unless otherwise stated in our offer, the offer is valid for 30 days from the date of the offer.
- 2.2. Information regarding performance and possibility of use as well as suitability for specific applications (e.g. data regarding use, temperatures, usage, mechanical/technical resilience, tolerances, capacities, loudness or the like) as well graphics thereof (e.g. drawings and illustrations) are always given without guarantee and are not guaranteed characteristics/features, as long as the usability for the contractual purpose expressly set out in writing does not require exact conformity.
- 2.3. The order of the goods by the customer is regarded as a binding acceptance of our offer, unless otherwise stated in the order.
- 2.4. We can demand reasonable remuneration for the preparation of a cost estimate if the contract is not concluded.

3. Scope of Performance, Obligations of the Customer

- 3.1. We do not render consulting services in the form of plant planning. The commissioning or connection of the purchased item is not owed, unless expressly agreed. The customer is advised that the commissioning or the connection of the purchased item has to be carried out only by competent

persons, e.g. companies specialised in refrigeration/cooling or refrigeration/cooling staff of the customer.

- 3.2. The customer alone is responsible for complying with all legal regulations and standards that are connected with the operation of the systems, including any necessary leakage control in accordance with the applicable regulations.
- 3.3. Prior to shipment we clean the used equipment and - if necessary - the new equipment. The customer has to clean any contaminations that occur thereafter, be it because of the shipping or for any other reason. Used equipment may have been used for various purposes. It is therefore the responsibility of the customer to ensure that their own systems are not contaminated by the connection of the used equipment.
- 3.4. The customer is responsible for the discharge of the condensate.

4. Delivery Deadline, Delivery Delay

- 4.1. Deadlines for delivery and performance periods are agreed individually or communicated by us in our offer.
- 4.2. If we are unable to comply with binding delivery deadlines for reasons we are not responsible for (non-availability of the performance), we will notify the customer and inform him about the new expected delivery period. We are entitled to withdraw partly or in full from the contract if the performance is also not available within the new performance period; any counter performance made by the customer will be reimbursed in this case. In particular the non-timely self-delivery by our supplier is considered as non-availability of the performance in this sense.
- 4.3. If we are in delay with a delivery or if we are unable to make a delivery for any reason, our liability for damages is limited according to the provisions of para. 8 of this GTC (liability for damages due to fault).

5. Place of Performance, Delivery, Dispatch, Packaging, Transfer of Risk, Acceptance

- 5.1. Place of performance is Friedberg, unless otherwise agreed. If exceptionally the installation is also agreed and owed, the place of performance is the place where the installation has to be carried out. At the request and expense of the customer, the goods will be sent to another destination (dispatch purchase).
- 5.2. We are entitled to render partial deliveries and performances as far as they are reasonable for the customer.
- 5.3. Shipping and packaging are subject to our discretion. Return of packaging is not accepted. The customer has to take care of the appropriate disposal.
- 5.4. The risk shall be passed on to the customer at the latest by handing over the delivery item to the freight forwarder, freight carrier or other third parties who are responsible for the execution of the dispatch (whereby the start of the loading process is decisive). This also applies if partial deliveries are made or if we accepted to render other performances (for example shipping or installation). If the dispatch or delivery is delayed due to a circumstance which is caused by the customer, the risk will pass to the customer at the day on which the delivery item is ready for dispatch and we have informed the customer accordingly.
- 5.5. After transfer of risk the storage costs shall be borne by the customer. When storage is carried out by us, storage costs amount to 0.25% of the invoice amount regarding the delivered items per week passed. The right to claim and the proof of further or lower storage costs is reserved.

- 5.6. We shall only insure the delivery against theft, breakage, transport, fire and water damage or other insurable risks upon the customer's explicit request and on the expense of the customer.
- 5.7. Insofar as an acceptance has to take place according to the statutory provisions, this shall be deemed to have taken place if
- the delivery and, if the installation is agreed and owed by us, the installation is completed,
 - we have informed the customer of this with reference to the fiction of acceptance ("Abnahmefiktion") according to this para. 5.7. and have asked for acceptance,
 - twelve workdays have elapsed since the delivery or installation or the customer has begun to use the purchased item and in this case six workdays have elapsed since delivery or installation and
 - the customer has not declared an acceptance within a period of twelve workdays after delivery or installation for any reason other than for a defect we were informed about, which makes the use of the purchased item impossible or substantially impaired.

6. Assembly and Commissioning

- 6.1. In case of delivery with assembly and/or commissioning of the purchased item the customer has to take over at his expense and provide in time:
- all earth, construction, masonry, chiselling and other work from outside the industry, including the required specialist and auxiliary workers, building materials and tools,
 - a plane, permanently fixed installation/storage surface for the unit,
 - the static inspection of the transport route as well as the installation location,
 - a suitable forklift or crane for loading or unloading,
 - the items and materials required for assembly and commissioning, such as scaffolding, lift equipment and other devices, fuels and lubricants,
 - energy and water at the site including the connections, heating and lighting,
 - measures to reduce sound and vibration,
 - water pipes including any required fittings,
 - discharge of condensate,
 - electricity supply to the main switch, incl. inserting, placing and locating surface (strain-relief mounted),
 - required signal and other related performances, including inserting, placing and locating surface (strain-relief mounted),
 - cleaning, rinsing, filling and venting of the water systems before the refrigeration commissioning,
 - isolation of cold and hot parts, if not offered separately by ICS-CE,
 - providing of resources such as water, antifreeze and electricity during time of assembly and commissioning,
 - hydraulic balancing of the water system and other adjustment works,
 - required additional commissioning and instructions not owed by us,
 - protective clothing and protective devices etc. which are necessary as a result of special circumstances of the assembly site.
- 6.2. Prior to the start of the installation work, the customer has to provide us unrequested with the necessary information on the location of concealed electricity, gas, water pipes or similar installations, the necessary static data as well as details of specialties which might prevent a smoothly installation, assembly and commissioning.
- 6.3. Access routes and the place for installation and assembly must be freely accessible, plane, cleared and open to traffic by trucks.

- 6.4. The customer shall bear the costs for the time of waiting and additional required travels to an appropriate extent if installation, assembly or commissioning is delayed by reasons for which we are not responsible.
- 6.5. The customer shall certify the hours worked by our employees and other persons appointed by us on a daily basis. If he does not fulfil this obligation or fails to do so in due time, our records are used as the basis for the invoice.
- 6.6. Insofar as assembly and commissioning is owed according to the contract, the systems installed by us shall be adjusted after assembly and the customer's operating personnel are familiarized with the proper operation. We shall coordinate the dates required with the customer. After completion of the regulation and instruction, the customer has to confirm in writing the correct completion of the work; any complaints and subsequent special requests shall be recorded in a protocol to be signed by both parties.
- 6.7. In case of assembly, commissioning and service, additionally our general service terms and conditions apply.

7. Limitation period, Warranty

- 7.1. An agreed delivery of used items is made under exclusion of any warranty. Claims arising out of material or legal defects shall be time barred in one year. The period starts with delivery or, as far as an acceptance takes place, from the date of acceptance. The limitations of this para 7.1 (limitation period, warranty) shall not apply to claims for damages by the customer resulting from injury to life, body or health or from intentional or grossly negligent breach of duty by us, our legal representatives or our vicarious agents. Furthermore, the limitations of this clause 7.1 (limitation period, warranty) shall not apply if we have maliciously concealed a deficiency or have assumed a guarantee for the quality of the goods and for claims of the customer according to the Product Liability Act.
- 7.2. Directly after delivery to the customer or to the third party designated by him, the delivered goods have to be inspected carefully. The goods are considered as accepted regarding obvious defects or defects which are noticeable in the case of an immediate, careful investigation, if we do not receive a written complaint within seven working days after delivery. In respect of other defects, the delivered goods shall be deemed to be approved by the customer if the complaint is not received by us within seven working days after the point in time the defect was noticeable; if during normal use the defect was noticeable for the customer at an earlier point in time, this earlier date is decisive for the commencement of the period for complaints. At our request, a complained delivery item shall be returned to us free of freight charges. In the case of justified complaints, we will reimburse the costs of the most cost efficient way of delivery; this does not apply to the extend costs increase because the delivery item is located in a place other than the place of the intended use.
- 7.3. In case of material defects of the delivered goods, we shall be obliged and entitled according to our choice, which has to be communicated within reasonable time, to rectify the defect or replace the goods. In the event of a failure, i.e. impossibility, unreasonableness, refusal or unreasonable delay of the repair or replacement, the customer can withdraw from the contract or reduce the purchase price appropriately.
- 7.4. Insofar as the customer informs us about a product defect and subsequently it becomes clear that the defect does not actually exist or does not fall within our sphere of responsibility, e.g. because it is caused by improper commissioning or use by the customer, the customer is obligated to pay the service work incurred with us plus travel expenses at our usual rates.

- 7.5. In the case of defects of components of other manufacturers, which we cannot remedy for licensing or actual reasons, we will at our discretion enforce warranty claims against the manufacturers and suppliers for the account of the customer or assign them to the customer.
- 7.6. The warranty does not apply if the customer himself or by a third party changes or modifies the delivered item without our consent and thereby it becomes impossible or unreasonable to rectify the defect. In any case the customer shall bear the additional costs for the rectification of the defect arising from the modification.

8. Liability for Damages due to Fault

- 8.1. Our liability is governed by statutory provisions, unless otherwise stated in these GTC.
- 8.2. We shall not be liable in the case of simple negligence on the part of our corporate bodies, legal representatives, employees or other vicarious agents, insofar as this is not a violation of essential contractual obligations. Essential contractual obligations are obligations to deliver the good in time and, if owed, installation of the delivered item, the non-existence of legal defects which affect the functionality or usability more than just insignificant as well as protection or duty of care obligations which should enable the customer to use the delivered item in accordance with the contract or which purpose is the protection of the body or life of the customer's personnel or the protection of his property against serious damages.
- 8.3. As far as we are liable for damages according to para 8.2. the liability is limited to damages which we have foreseen at the conclusion of the contract as possible consequence of a breach of contract or which we should have foreseen in the application of customary diligence. Indirect damages and consequential damages which are the result of defects of the delivered item, are further only eligible for compensation as far as such damage has typically to be expected when the delivered item is used as intended.
- 8.4. The aforementioned exclusions and limitations of liability apply to the same extent to our corporate our bodies, legal representatives, employees and other vicarious agents.
- 8.5. To the extent we provide technical information or act as an adviser and this information or advice is not part of the contractually agreed scope of performances we owe, this shall be free of charge and without any liability.
- 8.6. The limitations of this clause 8. (liability for damages due to fault) shall not apply if we have maliciously concealed a defect or have assumed a guarantee for the quality of the goods and for claims of the customer according to the Product Liability Act. The limitations of this clause 8. (liability for damages due to negligence) shall also not apply to our liability for intentional or grossly negligent breach of duty and for damages from injury to life, body or health; this also applies to breaches of duty by our legal representatives or vicarious agents.

9. Retention of Title

- 9.1. Until full payment of all our present and future receivables resulting from the purchase contract and current business relationship (secured claims) we retain title in regard the sold goods.
- 9.2. Prior to the complete payment of the secured claims the goods subject to retention of title may neither be pledged to third parties nor transferred to third parties for security reasons. The customer must notify us in writing without delay if an application for the opening of insolvency proceedings is filed or as far as access by third parties (for example seizures) to the goods belonging to us takes place.

- 9.3. In the event of a breach of contract by the customer, in particular in the case of non-payment of the purchase price due, we are entitled to withdraw from the contract in accordance with statutory provisions and to demand handing over of the goods due to the retention of title.
- 9.4. Until revocation the customer is entitled according to lit. c) below to resell and/or process the goods subject to retention of title in the frame of the normal course of business. In this case the following provisions shall apply in addition.
- a) the retention of title extends to products resulting from the processing, mixing or combination of our products at their full value. If in case of processing, mixing or connection with goods of third parties their proprietary rights remain, we acquire co-ownership in the ratio of the invoice values of the processed, mixed or connected goods. Besides, for this product the same applies as to the goods delivered under retention of title.
 - b) For security reasons already now the customer assigns the claims arising from the resale of the goods or the product to third parties to us in full or in the amount of our possible co-ownership share pursuant to the preceding paragraph. We accept the assignment. The conditions described in clause 9.2. shall also apply in respect of the assigned claims.
 - c) Besides us, the customer remains entitled to collect the claim. We undertake not to collect the claim as long as the customer meets his payment obligations against us, there is no shortage of his performance capability and we do not exercise the right to retention of title by exercising a right pursuant to clause 9.3. If this is the case, we can demand that the customer notifies us of the assigned claims and their debtors, make all necessary information for collection, hand over the related documents and notifies the debtors (third parties) of the assignment. In this case we are also entitled to revoke the customer's authorization to resell and process the goods subject to retention of title.
 - d) If the realizable value of the securities exceeds our claims by more than 10%, we shall, at the customer's option, release securities at our choice.

10. Prices, Terms of Payment

- 10.1. The prices are valid for the scope of supply and the delivery described in the offer or in the order confirmation. Additional or special performances (e.g. construction, installation, commissioning not listed in the offer or order confirmation) will be invoiced separately. The prices are in EURO ex warehouse plus packing as well as statutory value added tax (VAT).
- 10.2. The customer bears the transport costs ex-warehouse and the costs of a transport insurance requested by the customer in case of a dispatch purchase (clause 5.1 of these GTC). All customs duties, fees, taxes and other public charges shall be borne by the customer.
- 10.3. The purchase price (without deduction) is due for payment immediately upon receipt of the invoice if the offer, the order confirmation or the invoice does not contain another date of payment. A cash discount is only permitted if expressly agreed. If in individual cases a cash discount has been agreed, this is admissible if the customer is in arrears with the payment of another invoice.
- 10.4. We are entitled to carry out outstanding deliveries or performances only against payment in advance or security payment if we get aware of circumstances which considerably reduce the creditworthiness of the customer and by which the payment of our outstanding claims by the customer is at risk.
- 10.5. If the customer is in default with his payment obligation, the purchase price bears interest during this period in the amount of the applicable statutory interest rate. We reserve the right to claim further damages for the delay. Towards merchants our claim to the commercial interest rate (§ 353 HGB) remains unaffected.

- 10.6. All invoice amounts are payable in one amount immediately after the invoice has been issued. Partial payments for deliveries are only possible if they have been agreed in writing previously.
- 10.7. The customer has only the right to set-off or retention rights insofar as his claim is legally binding or undisputed. In the case of defects regarding the delivery, the customer's counter-rights remain unaffected.
- 10.8. We do not provide construction services within the meaning of § 48 para. 1 EStG or § 13b para. 2 UStG. The invoice amount must therefore be paid to us in full without deduction.

11. Applicable Law, Jurisdiction

- 11.1. The relations between us and the customer are exclusively subject to the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) does not apply.
- 11.2. Exclusive – also international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is our place of business. However, we are entitled to bring an action at the general place of jurisdiction of the customer. Prior statutory provisions, in particular exclusive competences, shall remain unaffected.

12. Final Provision (Severability Clause)

In case a clause of the above GTC is invalid, the concluded contract shall remain valid. Instead of the invalid clause, the corresponding legal provisions have to be applied.