

1 Coming into force, scope and (partial) invalidity

- 1.1 *With effect from 01.05.2015*, all contracts entered into between Sunnen AG (Sunnen) and its customers shall be *exclusively* subject to these General Conditions of Sale. Sunnen expressly reserves the right to make written changes. The customer's conditions to the contrary or varying conditions shall not be acknowledged, and do not give rise to any effect. Insofar as Sunnen offers vary from these General Conditions of Sale, preference shall be given to the former. Our General Conditions of Sale apply to all future business transactions with our customers, even if they are not agreed upon anew each time.
- 1.2 All agreements are subject to the written form, including signing by the contracting parties, in order to be deemed valid. Signed communication by facsimile shall be deemed valid. E-mails are valid in respect of the date, but require signed confirmation.
- 1.3 The order confirmation is authoritative for the quantitative and financial scope of Sunnen's services. It shall be deemed acknowledged in all parts by the business associate if a complaint is not lodged regarding the order confirmation in writing and in detail within five working days following receipt.

2 Sunnen's offers; orders placed by the customer

- 2.1 Sunnen's offers are valid for 60 days from the offer date - and in any case *restricted* to the duration of the respective valid price lists.
- 2.2 Sunnen's offers apply *only* to the addressee.

3 Prices

- 3.1 The prices stated by Sunnen apply in Swiss Francs (FCA) from Sunnen's registered office in CH-8586 Ennetaach-Erlen, Switzerland.
- 3.2 The cost of any kind of taxes (incl. VAT), charges and levies (incl. customs duties) shall be borne by the customer.

4 Transport

- 4.1 On request, Sunnen shall assume the CIF delivery. The buyer shall be charged for the resulting delivery costs and cost of the necessary documents, such as the certificate of origin.
- 4.2 All complaints regarding damage to and delay of the freight are to be lodged directly with the forwarding agent.

5 Payment conditions

- 5.1 In the case of orders in excess of CHF 50,000.00, payment is to be effected alternatively as follows:
 - Irrevocable letter of credit for the entire invoice amount, confirmed by Credit Suisse, CH-8587 Weinfelden or
 - in advance 30% upon confirmation of order
60% upon acceptance at Sunnen plant
10% within 30 days following delivery
- 5.2 In the case of orders of CHF 50,000.00 or less, payment is to be effected alternatively as follows:
 - In advance with 2% trade discount using a T/T to, or
 - Within 30 days net form date of invoice.
- 5.3 All bank charges (bank charges for I/C commission, respectively T/T or SWIFT expenses) shall be borne by the customer.
- 5.4 Complaints about invoices must be made in writing within an exclusion period of 2 weeks following receipt of the invoice and performance. Otherwise the invoice shall be deemed ultimately acknowledged.

6 Default on the part of the customer

- 6.1 The customer shall be deemed to have *defaulted* upon expiry of the above payment periods. From then on 6% interest on arrears shall fall due p.a.
- 6.2 In addition, Sunnen is to be reimbursed for the *costs* incurred due to the default by the customer, in particular those incurred for the necessary prosecution of actions including lawyer's and court costs.
- 6.3 *In addition*, default on the part of the customer shall entitle Sunnen to discontinue all further services, withdraw from the contract, request the return of supplied products or, following a written announcement, take these back and to postpone honouring other contracts with the customer or rescinding such contracts without additional formalities, and *furthermore* assert claims for damages. Sunnen may undertake the stated measures with immediate effect without corresponding notice or further warning.

7 Scope of delivery, delivery periods and part deliveries

- 7.1 *The scope of delivery does not include* further-reaching technical specifications, setting up, assembly, any kind of intellectual property rights, environmental tests and such that extend above and beyond Sunnen's customary standard tests, certification and packaging that extends above and beyond Sunnen's standard packaging.
- 7.2 In particular, the customer is responsible for installing electrics, water, additional and exhaust air.
- 7.3 Extra charges shall apply to services rendered by Sunnen in this area.
- 7.4 *Delivery dates* stated by us are merely guide times and are *not* binding assurances or fixed dates.
- 7.5 If the customer defaults in acceptance, or violates any other duty to co-operate, it shall be required to compensate Sunnen for the resulting damage, including additional costs that may apply and Sunnen reserves the right to lodge further-reaching claims. Insofar as the above prerequisites are met, the risk of accidental loss or accidental deterioration of the products passes to the customer at the latest at the time at which the customer defaults in acceptance or has violated any duty to co-operate.
- 7.6 Sunnen is only liable in accordance with the statutory provisions for default in delivery insofar as that is based on a contractual violation caused with intent or by gross negligence on the part of Sunnen.
- 7.7 *Part deliveries* are permitted. They shall be charged as carried out.

8 Transport, risk bearing and liability

- 8.1 The customer is responsible for *transport operations* and transport documents, means of transport and transport routes.
- 8.2 Insurance is the customer's concern.
- 8.3 The transport costs (including loading and offloading) and insurance shall be borne by the customer.
- 8.4 The risk of loss, destruction, damage and liability for the products shall, in any case, be the customer's responsibility as soon as they are ready for transport/shipping. If the products return to Sunnen for whatever reason, the customer shall still run the risk and liability until they have been unloaded at Sunnen's business premises.

9 Acceptance and notification of defects

- 9.1 The delivery item and the individual part services agreed upon

- in the contract shall be the subject of an acceptance review upon acceptance at the Sunnen plant.
- 9.2 The acceptance shall be carried out jointly by Sunnen and the customer. In the event of differences, the parties shall call on the services of an independent expert. If the alleged defects are identified by the expert, Sunnen shall assume the costs, otherwise the customer.
- 9.3 The acceptance shall be set out in a record that is to be signed by both parties. All identified defects, including measures to rectify these, are to be set out in the record. If defects are identified during the acceptance, no acceptance occurs or a partial acceptance shall apply subject to the written reservation of subsequent improvement.
- 9.4 Sunnen undertakes to rectify defects in accordance with the warranty provisions (paragraph 10). The regulations therein shall apply if subsequent improvement fails.
The date on which the record is signed shall be deemed the acceptance date. Where rights are reserved regarding subsequent improvement or a new acceptance, the acceptance date shall be deemed the date of the previously unreserved acceptance. The same procedure applies to partial performance.
- 9.5 If goods are delivered without acceptance (paragraph 9.1), the customer is to provide written notification, in the case of *visible defects*, without delay following receipt of the products (or in the case of set-up or assembly by or by order of Sunnen directly following conclusion of such work), and describe the defects in detail. In addition the carrier and forwarding agent are to be informed immediately in writing of transport damage and short deliveries.
- 9.6 Written notification is to be provided without delay, including a detailed description, once *hidden defects* are identified.
- 9.7 If the customer fails to correctly provide notification of defects, the products shall be deemed unreservedly *acknowledged*.
- 10 Warranty and liability**
- 10.1 Sunnen shall be liable for product defects on condition that the customer has correctly honored its obligation to review and provide notification of defects in accordance with paragraph 9. The liability period is 12 months and start upon commissioning or production start-up but no later than 3 months after delivery.
- 10.2 The statutory periods apply to *warranty claims falling under the statute of limitations*.
- 10.3 In the event of a defect, Sunnen shall be entitled, *at its discretion, to rectify the defect* or provide a replacement delivery. In the event of rectifying defects, Sunnen shall carry all expenses required to rectify defects, in particular transport, infrastructure, work and material costs insofar as these are not increased because the products were brought to a location other than the place of performance. Sunnen is free to make a replacement product available during the repair or replacement period. If the rectification of defects / replacement delivery fails, the customer shall, at its discretion, be entitled to request cancellation of the contract (conversion) or an appropriate reduction of the purchase price (abatement). Sunnen is to be informed in writing without delay of the chosen action following the failure of the rectification of defects.
- 10.4 In the event of replacement or repair, a new *warranty period shall not commence*. Merely the part of the original warranty period that has not yet lapsed shall continue.
- 10.5 Any *further-reaching material or legal warranty* is excluded.
- 10.6 Sunnen shall be *liable* in accordance with the statutory provisions without consideration given to the legal nature of the customer's claim for damages that occur due to intent or gross negligence on the part of Sunnen or its representatives or vicarious agents. *In other respects*, liability on the part of Sunnen is excluded. Sunnen shall not be liable for damages, in particular, that does not involve the products. Sunnen reserves the right to apply the mandatory regulations of the Product Liability Act.
- 11 Intellectual property rights**
- 11.1 *Sunnen shall retain all intellectual property rights* (such as patents, brands or the company description).
- 11.2 The customer may not use Sunnen's intellectual property rights *without prior, written, approval* by Sunnen. Sunnen reserves the right to use its advertising material.
- 11.3 The customer is to inform Sunnen without delay in writing if third parties allege violation of intellectual property rights by Sunnen products. The customer is to support Sunnen to the best of its ability, and in accordance with Sunnen's instructions, in warding off such claims. Sunnen shall be liable to the customer for possible damage caused from alleged or actual violations in accordance with paragraph 10.6. In addition, Sunnen is free to amend or replace products that potentially or actually violate third-party intellectual property rights without this giving rise to any compensation (or other) whatsoever on the part of the customer
- 11.4 If the customer identifies a possible *detrimental effect on Sunnen intellectual property rights*, it is to inform Sunnen of this in writing without delay, and support Sunnen to the best of its ability in safeguarding Sunnen's rights in accordance with Sunnen's instructions.
- 11.5 The *customer guarantees* that Sunnen does not violate any third-party intellectual property rights by way of manufacturing products in accordance with its drafts, technical data or instructions. It shall be liable in full for all consequences resulting from such an alleged or actual violation.
- 12 Reservation of title**
- 12.1 The supplied products shall remain *Sunnen's property* until payment in full of all claims resulting from the business relationship between the customer and Sunnen.
- 12.2 In the event of conduct in breach of contract on the part of the customer, in particular in the case of delay in payment (see also above paragraph 6.1), Sunnen shall be entitled *to request the return of the supplied products or take these back itself*. The taking back of products by Sunnen does not constitute any withdrawal from contract unless Sunnen had expressly stated this in writing. The seizure of products by Sunnen shall, at all times, constitute a withdrawal from contract. Once Sunnen has taken back the supplied products, it shall be free to utilize them at its discretion. The resulting proceeds, less appropriate administrative costs, are to be counted towards the customer's liabilities.
- 12.3 In the case of seizure or other intervention by third parties, the customer is to inform Sunnen in writing without delay so that Sunnen can safeguard its rights. The customer shall be liable for the shortfall suffered by Sunnen.
- 12.4 Sunnen undertakes, at the customer's request, to *release* the above-mentioned *securities* to which Sunnen is entitled insofar as the realizable value of these securities exceeds

Sunnen's claims, which are to be secured, by more than 10%. Sunnen is free to choose the securities that are to be released.

13 Place of performance

- 13.1 *Sunnen's registered office* is deemed the place of performance for all the contracting parties' obligations insofar as Sunnen has not specified anything to the contrary.

14 Various provisions

- 14.1 The customer may only set off its counterclaims with Sunnen's claims if its claims have become *res judicata* or its counterclaims are not disputed.
- 14.2 The customer is *not to assign* its claims against Sunnen to a third party. By contrast, Sunnen is free in this respect.
- 14.3 The customer shall only be entitled to exercise a *right of retention* in the case of undisputed claims.
- 14.4 Sunnen may call on the services of third parties to honor its obligations.
- 14.5 Sunnen may amend these General Conditions of Sale at any time. The new General Conditions of Sale shall apply from the date stated therein to all Sunnen services and all contracts entered into between Sunnen and the customer.
- 14.6 *Correspondence* is to be directed to Sunnen AG, Fabrikstrasse 1, CH-8586 Ennetaach-Erlen.
- 14.7 **All legal relations between Sunnen and the customer are subject solely to the substantive law of Switzerland without international private law. Applicability of the international conventions, in particular sales law conventions, is excluded.**
- 14.8 The ordinary courts at Sunnen's registered seat are deemed competent for all disputes in connection with Sunnen's services.

Registered office:

Sunnen AG
Fabrikstrasse 1
8586 Ennetaach-Erlen
Switzerland