

# General terms and conditions

## CONTI Sanitärarmaturen GmbH

Our offers, order confirmations, sales and deliveries are exclusively subject to the following Terms and Conditions. These also apply to all future transactions even if we do not expressly refer to them in each individual case. Terms and conditions of the customer (buyer or ordering party) do not become part of the contract, even if they have not expressly been objected to. Any individual agreements made with the buyer on a case-by-case basis (including side agreements, supplements and amendments) always take priority over these General Terms and Conditions. Subject to evidence to the contrary, the content of such agreements requires a written contract or our written confirmation. Our Terms and Conditions apply only with respect to entrepreneurs within the meaning of sections 14, 310(1) German Civil Code (Bürgerliches Gesetzbuch – “BGB”).

### I. Offer

1. Any documents provided in the context of an offer, such as illustrations, drawings, weights and dimensions, shall only be approximate unless they are expressly stated as binding. We reserve rights of ownership and copyright in relation to cost quotations, calculations, drawings and any other documents. This shall also apply to written documents that have been designated as being “confidential”. Any transfer to third parties by the customer requires our prior express written consent.

2. Quoted prices shall be non-binding.

3. Goods orders placed by customers are deemed to constitute a binding contract offer. Unless otherwise indicated in the order, we are entitled to accept this contract offer within two weeks after receiving it.

4. Acceptance may be declared either in writing (e.g. by order confirmation) or by delivery of the goods to the customer.

### II. Scope of delivery

The scope of delivery shall be based (i) on our written order confirmation or (ii) on the offer in the case of an order with a fixed period of validity and timely acceptance provided that no order confirmation is issued.

### III. Delivery time

1. Details regarding delivery times and dates are always only approximate and without obligation. If, in individual cases, we have expressly stated that the delivery time is binding, it shall only commence after all details regarding the pending delivery – in particular all technical questions – have been clarified and only in the event of the timely and complete fulfilment of the customer’s contractual obligations. We reserve the right to invoke the “defence of non-performance of the contract” (Einrede des nicht erfüllten Vertrages).

2. The delivery time shall be reasonably extended in the event of measures in the context of industrial action, in particular strikes and lockouts, as well as if unforeseen obstacles arise that are beyond our control if such obstacles demonstrably have a significant influence on the completion or delivery of the delivery item. The same applies if those circumstances arise with sub-contractors. We are not re-

sponsible for the aforementioned circumstances even if they occur during a pre-existing delay. In important cases, we will notify the customer of the start and end of such obstacles as soon as possible.

3. The delivery deadline is deemed to have been met if, prior to its expiry, the delivery item has left the factory.

4. If a customer is in default of acceptance or violates any other obligations to cooperate, we are entitled to claim damages for any loss or damage incurred in this regard, including any additional expenses incurred. This shall not affect any further rights and claims.

5. If the conditions laid down in clause III.4 have been met, the risk of accidental loss or accidental deterioration of the purchased item passes to the customer at the time at which the customer is in default of acceptance or payment.

6. In the event of call-off orders, the delivery date is deemed to be the period agreed between the customer and us. If the orders are not called-off within a reasonable grace period set by us, we are free to deliver the goods and invoice them or to withdraw from the purchase agreement and assert a claim for damages.

### IV. Prices, terms of payment

1. Unless otherwise indicated in the offer or the order confirmation, our prices effective on the day of delivery apply “FCA Wetttemberg”, including packaging if applicable. The prices apply in addition to value added tax at the statutory rate as applicable at the time of delivery.

2. The deduction of a cash discount requires a specific written agreement. Unless indicated otherwise in the order confirmation, the net price (without any deduction) is due and payable within 30 days from invoicing. Customer service invoices are payable net immediately. If the customer is in default of payment, we are entitled to claim default interest of 9% over the base rate pursuant to section 247 BGB. We reserve the right to claim additional loss or damage caused by the default. Any circumstances that come to light after the contract has been entered into which may reduce the customer’s creditworthiness result in all our claims falling due immediately and entitle us to request security.

3. Customers shall only be entitled to set off any payment claims if their counterclaims have been upheld and declared unappealable by a court of law, or if such counterclaims are uncontested or have been accepted by us. In addition, customers shall only be entitled to exercise a right of retention if their counterclaim is based on the same contractual relationship.

4. Unless otherwise indicated in the offer or the order confirmation freight and document charges shall be born by the customer.

5. Goods that have been supplied free of defects may only be returned once we have granted our written approval. For all returned goods, we will deduct 35% from the credited price for processing costs. Any necessary reconditioning or repackaging costs will be charged for separately. The customer shall bear the return transport

risk and the return transport costs. Only returns of any kind that are free of charge and have been agreed or approved by CONTI Sanitärarmaturen GmbH prior to the return will be accepted.

6. Our commercial agents are not entitled to collect any payments.

## V. Transfer of risk and acceptance

1. Unless otherwise indicated in the order confirmation, delivery "FCA Wettenberg" shall be deemed agreed. Any transport packaging and other packaging in accordance with the German Packaging Regulations (Verpackungsverordnung) are not taken back, except for pallets and the items referred to in clause IV.5. Customers are obliged to organise the disposal of the packaging at their own expense.

2. If customers require, we will insure the consignment against any transport damage as well as against any other insurable risks. The costs that accrue in that regard will be borne by the customer.

3. The risk shall pass to the customer acc. to the agreed Incoterm, even if partial deliveries are made or if we have taken on additional obligations such as dispatch costs or delivery and installation. We reserve the right to determine the shipping method.

4. If delivery or shipping is delayed due to circumstances for which the customer is responsible, the risk passes to the customer from the day on which the customer is notified that the goods have been made available; at the request and cost of the customer, we will insure the goods that are to be supplied.

5. Delivered items must be accepted by the customer – even if they have insignificant defects – without prejudice to the rights under clause VIII.

6. Part deliveries are permissible.

## VI. Reservation of title

1. We reserve title in the delivered goods until receipt of all payments due under the contract. If customers act in breach of contract, in particular if customers default on their payment obligations, we are entitled to take back the goods. Our taking back of the goods does not constitute a withdrawal from the contract unless we have expressly declared this in writing. After taking back the goods we are entitled to sell these. The proceeds of sale shall be credited against the customer's liabilities – less any reasonable costs of sale.

2. Customers are obliged to treat the delivered goods with due care; customers are in particular obliged, at their own expense, to insure the goods sufficiently and at replacement value against damage caused by fire, water and theft. If any maintenance and inspection work is required, customers shall perform this work in good time and at their own expense.

3. In the event of attachments or other third-party interventions, customers shall immediately notify us in writing to enable us to bring a legal action in accordance with section 771 German Code of Civil Procedure (Zivilprozessordnung – "ZPO"). If the third party is unable to reimburse us for the judicial or extrajudicial costs of a legal

action pursuant to section 771 ZPO, the customer shall be liable for any costs incurred by us.

4. Customers are entitled to resell any goods subject to reservation of title in the ordinary course of business; customers do, however, hereby assign to us all claims arising from the resale against their buyers or third parties together with all associated rights equivalent to our final invoiced amount (including VAT), irrespective of whether the goods have been resold with or without agreement. Customers shall remain authorised to collect this claim even after it has been assigned. This is without prejudice to our right to collect such claim ourselves. However, we undertake not to collect such claim as long as customers continue to meet their payment obligations in time and in full, as long as they are not in default of payment and, in particular, as long as no application has been made to start insolvency proceedings or suspend payments. If the authorisation to collect the claim is exercised, we are entitled to demand that customers notify us of the assigned claims and their debtors, provide all details necessary for a collection of such claims, hand over the attendant documents and notify the debtor (third party) of such assignment.

5. Any processing or transformation of the goods subject to reservation of title by the customer is always deemed to have been made on our behalf. If the goods subject to reservation of title are processed together with objects that do not belong to us, we shall acquire joint ownership of the new item at a ratio of the value of the goods subject to reservation of title (final invoice amount including VAT) in relation to the value of the other processed items at the time of processing. The same provisions as apply to the goods delivered subject to reservation of title shall apply in relation to the item that results from the processing.

6. If the goods subject to reservation of title are inextricably combined with objects that do not belong to us, we shall acquire joint ownership of the new item at a ratio of the value of the goods subject to reservation of title (final invoice amount including VAT) in relation to the other combined items at the time of combining. If the combination is such that the customer's goods are to be regarded as the main item, it shall be deemed to have been agreed that the customer shall transfer proportionate joint ownership to us. The customer shall hold the resulting sole or joint ownership on our behalf.

7. In order to secure our claims against them, customers also assign to us any claims which arise against a third party from the combination of the purchased item with a piece of real estate.

8. We undertake, upon the customer's request, to release the securities to which we are entitled to the extent that the realisable value of our securities exceeds the value of the claims to be secured by more than 10%; we are entitled to select which securities are to be released.

## VII. Notifications of defect

1. Warranty rights of customers require that customers have duly met their duties to inspect and give notice of defects according to section 377 German Commercial Code (Handelsgesetzbuch – "HGB"). Customers are obliged to inspect the delivered parts immediately after receipt.

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2. In the case of obvious defects, any notifications of defects must be addressed to us in writing without delay within 8 days from receipt, and these will only be taken into account if the goods are still in the same condition which they were in when they were delivered. In the event of justified complaints we reserve the right to replace or repair the defective goods. If customers fail to duly inspect the goods and/or duly notify us of any defects, our liability with regard to the defect that we were not notified of either in a timely manner or in the proper form is excluded in accordance with the statutory provisions.

3. We must be notified of any other defects and any consequential damage that may occur without delay and no later than within 2 weeks after they were discovered or could have been discovered. The customer must ensure that all required measures to mitigate the damage are taken without delay. We must be given the opportunity to inspect the defective parts and the damage in situ in their unchanged state.

### VIII. Liability for defects of delivery

We are liable for any defects in accordance with the following claims.

1. Parts that turn out to be defective due to circumstances prior to the passing of risk, in particular due to faulty design, poor materials or poor workmanship, will – at our discretion – either be repaired or replaced. The customer must return any replaced parts. If the repair is unsuccessful (section 440 sentence 2 BGB) or if the replacement item is also defective, the customer may reasonably reduce the contractually agreed price or withdraw from the contract. In the event of insignificant defects, a withdrawal from the contract is excluded. Special statutory provisions that apply if the unprocessed goods are to ultimately be delivered to a consumer shall remain unaffected in any event (recourse against supplier pursuant to sections 478 et seq. BGB) even if the consumer has processed the goods further.

2. Following consultation with us, the customer shall afford us the required time and opportunity to carry out all the repairs and replacements deemed necessary by us; otherwise we are deemed released from our liability for defects. Only in urgent cases which jeopardise operational safety and to prevent disproportionately large losses or damage – in which case we must be notified immediately and, where possible, our consent must be obtained – or if we are delayed in rectifying the defect, shall customers have the right to rectify the defect themselves or arrange for this to be done by qualified third parties and to request that we reimburse the necessary costs.

3. Provided that the complaint proves to be justified, we will bear any costs arising for purposes of inspection and subsequent performance following a notification of defects by the customer; otherwise, those costs shall be borne by the customer.

4. We will bear or reimburse the necessary costs incurred for purposes of inspection and subsequent performance – in particular costs of transport, infrastructure, labour and materials as well as disassembly and installation costs, if applicable – in accordance with

statutory provisions in the event that there is an actual defect. Otherwise we are entitled to require the customer to reimburse us for costs incurred due to the unjustified request to remedy a defect (in particular inspection and transport costs) unless the customer was aware of the lack of a defect or could have detected this.

5. All electrical installations and connection work that involves our products may only be carried out by skilled electrical contractors. In the event that the installation is not carried out professionally, we do not accept any functional warranty claims, any other warranty claims and any damages claims.

6. Even in the event of defects, claims of the customer for damages or compensation for expenses incurred in vain only exist in accordance with clause IX. and, apart from that, are excluded.

7. Claims and rights of customers for defects become statute-barred after 2 years.

### IX. Liability for the breach of other obligations

1. We are liable for any loss or damage that we, a legal representative or a person employed in performing a contractual obligation for whom we are vicariously liable (Erfüllungsgehilfe) have caused due to intentional or grossly negligent breaches of duty.

2. In the event of ordinary negligence and subject to a more lenient standard of liability pursuant to statutory provisions (e.g. for the duty of care observed in our own affairs), we are only liable:

a) for loss or damage suffered due to injury to life, physical injury or health,

b) for loss or damage arising from a considerable breach of a fundamental contractual obligation (an obligation whose fulfilment is crucial for the proper performance of the contract and on the fulfilment of which the contracting party regularly relies and may duly rely); in this case our liability is, however, limited to compensation for the foreseeable loss or damage which typically occurs.

3. The restrictions of liability arising from clause IX.2 also apply in the event of breaches of duty by or for the benefit of persons for whose fault we are responsible in accordance with statutory provisions. The restrictions of liability do not apply if we have fraudulently concealed a defect or if we have provided an express warranty regarding the quality of the delivery items and for claims of the customer under the German Product Liability Act (Produkthaftungsgesetz).

Any liability beyond the above is excluded.

### X. Liability for defects in the processing of parts that have been sent in

We do not accept such liability if these defects arise from the properties of the material. If parts that have been sent in become unusable during processing due to faults in the material or other defects of the parts, we are entitled to charge for the processing costs we have

incurred. If the work pieces become unusable due to circumstances for which we are responsible, we will process similar replacement pieces to the following extent:

a) In the event of individual orders, the customer shall provide a replacement piece free of charge and freight prepaid or we will deliver quantities that have been reduced accordingly.

b) In the event of series orders we will provide compensation if the reject rate exceeds 5% of the quantities supplied; compensation will be paid for the costs incurred by the customer for raw materials and wages, but no more than 5 times the processing value for the workpiece to be replaced. At our discretion, we may also produce or procure similar replacement pieces ourselves. The customer does not have any claims beyond these, regardless of the legal basis.

#### **XI. Rights of the customer to withdrawal in the event of an impossibility of performance**

1. The customer may withdraw from the contract if it becomes finally impossible for us to perform the contract in full prior to the passing of risk. The customer may also withdraw from the contract if, when ordering similar goods, the fulfilment of part of the delivery becomes impossible in terms of quantity and the customer has a legitimate interest in refusing a part delivery; if this is not the case, the customer may reduce the consideration accordingly.

2. If impossibility of performance occurs while the customer is in default of acceptance or is responsible for such impossibility, the customer shall remain obliged to pay the consideration.

3. If we fail to comply with an agreed delivery time, customers shall set a reasonable grace period for performance and if the grace pe-

riod is not met, then the customer is entitled to withdraw from the contract.

#### **XII. Right of the supplier to withdrawal**

1. In the case of unforeseen events within the meaning of clause III. – Provided that they significantly change the economic importance or the content of the goods or services owed or have a significant effect on our business – as well as in the case of an impossibility of performance which becomes apparent subsequently, the contract shall be reasonably adjusted. Insofar as this is not economically justifiable, we have the right to withdraw from the contract in whole or in part.

2. The customer does not have any damages claims because of such withdrawal. Should we wish to avail ourselves of this right of withdrawal in our capacity as suppliers, we will immediately inform the customer as soon as we realise the implications of the event, even if an extension of the delivery period was initially agreed with the customer.

#### **XIII. Place of jurisdiction**

1. If the customer is a merchant, a legal person under public law or a special fund under public law, the place of jurisdiction for all disputes arising from the contractual relationship shall be Gießen, Germany. We shall also be entitled to bring legal actions at the customer's headquarters.

2. Unless otherwise indicated in the order confirmation, our registered office shall be the place of performance.

3. German law shall apply.

Effective date 07/2020  
CONTI Sanitärarmaturen GmbH