

International Terms and Conditions of Sale and Delivery

1. General

All sales and deliveries (including future transactions in the case of continued business relations) are governed exclusively by the terms and conditions below of robatherm GmbH + Co. KG (hereinafter called "robatherm"), except as agreed otherwise in accordance with it. This shall also apply in the event that robatherm execute a delivery or service without reservation though knowing about terms and conditions of purchase. Any agreements to the contrary, made prior to or at conclusion of a contract must be set forth in writing.

2. Offers, delivery contracts

2.1 robatherm's offers are non-binding. Delivery contracts become effective upon written acceptance, order confirmation or invoice by robatherm but at the latest upon Customer's acceptance of the delivery.

2.2 Permits from public authorities and other approvals, which are necessary for an order to be executed, have to be obtained by the Customer.

2.3 The documentation pertaining to an offer, such as illustrations, drawings, data or weight, performance and consumption specifications, are approximate values only and not guaranteed characteristics, unless expressly referred to as binding. It does not exempt the Customer from compliance with applicable legal provisions and regulatory requirements nor from carrying out its own tests as far as necessary. All cost estimates, drawings and other documentation remain the property of robatherm and may not be reproduced, made available to third parties or used in Customer's own production processes without authorisation. Any breach of these provisions will entitle robatherm to claim reasonable remuneration as well as damage compensation.

3. Prices, payment, right of retention, set-off, default

3.1 All prices are Euro prices exclusive of statutory value-added tax (VAT), FCA (Incoterms 2020), exclusive of packing; packing shall be charged in addition.

3.2 robatherm may effect a credit insurance for delivery contracts and for this purpose may transmit the necessary Customer data to the insurance company, which Customer herewith consents to.

3.3 All payments fall due upon execution of the contract and are payable immediately without deduction within 30 calendar days after the invoice date. If robatherm becomes aware of any deterioration in Customer's financial circumstances before the goods are delivered or if Customer is in default with payment, robatherm will have the right to fix new payment terms. This shall apply also if the limit of an existing credit insurance is reduced and/or exceeded.

3.4 Customer may assert rights of retention or setoff with regard to claims of robatherm concerning other delivery contracts only on the basis of counterclaims which are uncontested or have been established by final enforceable judgment.

3.5 All payments shall be made by bank transfer and shall be deemed effected only when robatherm can unreservedly dispose of the full amount.

3.6 In any event of default in payment robatherm will – without prejudice to further claims – charge default interest since the due date at a rate of 9% points above the base interest rate p.a. as per Sec. 288 (2) German Civil Code; Customer may furnish proof that robatherm has incurred smaller losses.

4. Delivery, acceptance, packaging

4.1 All deliveries are subject to the agreed Incoterms (2020) unless stipulated otherwise FCA to the place of delivery named in the Confirmation of order. robatherm may effect partial deliveries except where this is not reasonably acceptable for Customer.

4.2 Without prejudice to Customer's further rights, Customer must accept delivery of all goods including defective goods.

4.3 If requested by the Customer, robatherm will take over the disposal of the transport packaging. In this case, the Customer shall ensure the return of the packaging to robatherm at its own expense.

5. Delivery times

5.1 All delivery periods and deadlines are without commitment unless delivery periods and deadlines have been agreed expressly as binding; compliance with the delivery obligations by robatherm shall be contingent upon the timely fulfillment of all duties and obligations by Customer, especially the approval of the technical specifications.

5.2 robatherm shall be deemed to have performed its obligations in due time if the goods are ready for shipping upon the expiry of the agreed delivery time and Customer has been given timely notice thereof.

5.3 Compliance with the delivery period depends on the timely and correct self supply by robatherm – even while robatherm is in default with delivery. In the event of any unforeseeable circumstances or operational breakdowns which are outside the control and responsibility of robatherm, the delivery time will be reasonably extended. This shall apply also where such circumstances affect a sub-supplier of robatherm. In any such event robatherm will have the right to postpone delivery for the duration of the hindrance, plus an appropriate lead time. If such hindrances prevail for longer than 2 months robatherm may withdraw from the contract. Customer will be entitled to the same right after having granted a reasonable respite.

6. Inspection of deliveries, warranty

6.1 The warranty ("Gewährleistung") for defects shall be governed by the applicable laws as amended by the terms and conditions below. Defects will not be acknowledged if Customer fails to comply with robatherm's assembly, commissioning, operating and maintenance instructions, causes defects by inexpert modifications and/or uses the goods for other purposes than those intended by the contract.

6.2 Customer's duties of notification of defects are governed by Sec. 377 German Commercial Code. Any obvious defects must be reported to robatherm in writing without delay but at the latest within 10 calendar days after receipt of the goods. Any hidden defects must be reported to robatherm in writing without delay but at the latest within 10 calendar days after their discovery. On robatherm's request the Customer has to send the rejected goods for inspection DDP (Incoterms 2020) to robatherm's place of business or to another place specified by robatherm, including unloading at Customer's cost and risk.

6.3 Warranty claims (except claims for damages) become time-barred (warranty period; "Gewährleistungsfrist") 12 months after initial start-up but at the latest 15 months after delivery (passing of risk), unless the defect has been fraudulently concealed or concerns a guarantee ("Garantie") as to the quality of the product or work result or the acceptance of a purchasing risk has been agreed or if the product is a building or product which has been used for a building according to its ordinary use and has caused its defectiveness. In accordance with the provisions hereof, the warranty period is one year for spare parts delivered outside any warranty. The warranty period commences on the date of delivery.

6.4 Remedial action ("Nacherfüllung") will be taken within a reasonable period of time either by replacement or repair, at the option of robatherm. The original place of delivery shall be the place for remedial action; costs for disassembling, pick up or assembling are not borne by robatherm within supplementary performance. Notice of withdrawal from the contract may be given only and no later than 10 calendar days after the second failed attempt at remedial action. Any parts that are replaced become the property of robatherm; repair work or replacement delivery will suspend the limitation period only if robatherm has explicitly acknowledged the obligation to take remedial action. The liability of robatherm for any damage shall be governed exclusively and exhaustively by sec. 7 below.

6.5 robatherm accepts no warranty for compliance with the technical requirements applicable in the country (other than Germany) where the robatherm product shall be used. This is a responsibility of Customer.

7. Liability

7.1 robatherm accepts unlimited liability for any damage caused by intent or gross negligence. In the event of a slightly negligent breach of a duty whose breach puts the achievement of the contractual purpose at risk or whose fulfillment is essential to the due and proper performance of the contract and whose fulfillment Customer may reasonably rely upon ("material obligation"), the liability of robatherm shall be limited to damage foreseeable at the time of execution of the contract and characteristic for the contract. The damage foreseeable at the time of execution of the contract and characteristic for the contract shall be limited on the merits and in terms of amount to the liability insurance of robatherm up to a maximum of 20 million Euro each occurrence.

7.2 robatherm accepts no liability for a slightly negligent breach of any duties which are not material obligations.

7.3 The above exclusions and limitations of liability shall not apply in the event of fraudulent concealment of defects or a guarantee as to quality, to claims under the Product Liability Act and to personal injury (life, limb, health). This does not involve a reversal of the burden of proof to Customer's disadvantage.

7.4 Any exclusions or limitations of the liability of robatherm apply also to the personal liability of robatherm's employees, staff, representatives and vicarious agents.

7.5 Customer shall not modify the products and, in particular, shall not change or remove any existing warnings about risks associated with improper use of the products. If Customer breaches this duty, Customer shall indemnify robatherm, as between the parties, from and against any product liability claims asserted by third parties, unless Customer is not responsible for the defect triggering the liability. Customer shall inform robatherm in writing without delay of any risks associated with the use of the products, as well as any product defects, coming to Customer's attention.

8. Assembly, execution, termination, withdrawal

8.1 Any assembly work shall be remunerated separately, unless agreed otherwise. If assembly or commissioning is delayed without fault of robatherm, all costs incurred by the delay shall be borne by Customer. Work on Sundays or holidays and overtime work shall be invoiced at the applicable rates plus surcharges.

8.2 Customer shall in any case be responsible for obtaining all necessary permits and tests.

8.3 If Customer is entitled to a right of termination by law, robatherm may claim either the agreed price less the amount saved by robatherm as a result of the non-completion, or a flat fee of 20% of the agreed price.

8.4 In the event of any unforeseeable circumstances which materially change the original economic facts underlying a delivery contract, and in the event it becomes apparent that it is impossible for robatherm to fulfil the contract or material parts thereof, the contract will be reasonably adjusted. Where this is impossible or economically unacceptable, robatherm will have the right to withdraw from the contract or parts thereof; Customer will not be entitled to any compensation.

9. Reservation of title

9.1 All goods delivered remain the property of robatherm until the purchase price has been paid in full (goods under reservation of title). Customer may resell the reserved goods in the ordinary course of business. For this event Customer herewith assigns all claims arising out of the resale of reserved goods, in order to secure all claims of robatherm. Customer is revocably authorised to collect the assigned claims. As long as the reserved goods remain the property of robatherm, robatherm may revoke the authorisation to resell the goods if there is a legitimate reason.

9.2 Processing and remodelling shall at all times be effected on behalf of robatherm as manufacturer, but without any obligation on the part of robatherm. In case the co-ownership of robatherm lapses as a result of compounding or blending, the parties hereby agree that the co-ownership of the resulting item shall be transferred to robatherm in proportion to the relevant value as invoiced. The resulting co-ownership rights shall be regarded as goods under reservation of title within the meaning of sec. 9.1. Customer shall keep safe robatherm's property or joint property free of charge.

9.3 If the Customer is based outside Germany or resells the goods under reservation of title outside Germany, he has to safeguard robatherm's retention of title up to full payment of the goods or offer an alternative, equal means of security.

10. Place of performance, jurisdiction, governing law, final provisions

10.1 The seat of robatherm shall be the place of performance for all obligations; any notices must be sent directly to that address.

10.2 The courts at the seat of robatherm shall have exclusive jurisdiction for any disputes arising out of or in connection with a delivery contract; robatherm may also sue Customer at any other legal competent place of jurisdiction. Instead of appealing to an ordinary court of law robatherm, as claimant, may also opt to have a legal dispute between the parties decided by binding arbitration in accordance with the Arbitration Rules of the German Institution of Arbitration (DIS), without recourse to the ordinary courts of law; the place of arbitration shall be at the seat of robatherm and the language of the arbitration proceedings shall be German.

10.3 The legal relationships arising out of or in connection with a delivery contract shall be governed exclusively by German law to the exclusion of the UN Sales Convention (Convention on the International Sale of Goods).

10.4 If any terms or clauses of these Terms and Conditions of Sale and Delivery are invalid, this shall not prejudice the validity of the delivery contract as such. The omission resulting from an invalid term or clause shall be remedied and completed in accordance with the intent and purpose of the contract as required by law. Sec. 650 (1) sentence 1, 3 German Civil Code shall apply for the delivery of the goods by robatherm. Deviating from this, commissioning services made by robatherm (if ordered) are governed by Sec. 611 ff German Civil Code.