TERMS AND CONDITIONS OF DELIVERY

1. GENERAL

1.1 MONTRATEC delivers goods and provides services on the basis of the general present terms and conditions of business only. Diverging terms and conditions made by the customer shall only be binding if agreed to in writing and acknowledged by MONTRATEC.

1.2 These general terms and conditions of business shall also apply further orders without reference thereto having to be separately reiterated.

1.3 All offers are without engagement unless agreed otherwise.

1.4 MONTRATEC retains the title to and copyright of samples, estimates of costs, drawings and other documents, records or data pertaining the offer, including such in electronic form. They shall be disclosed to third parties only with the consent of MONTRATEC. The customer is obliged to disclose information, documents, records or data described or identifiable as confidential to third parties only after prior express consent by MONTRATEC.

1.5 Collaborative agreements with respect of the order to supplements to the present terms and conditions must be made in writing in order to be valid.

2. PRICE AND PAYMENT

2.1 The prices of MONTRATEC apply ex works and are understood without costs for packing, freight, insurance and other forwarding costs. The prices are net prices to which all taxes accrually apply in the statutory rate applicable to the time of delivery.

2.2 Unless agreed otherwise, the payments are to be made to MONTRATEC without any deduction and free of charge, 1/3 of contract price after receipt of the order confirmation, 1/3 after notification that the main parts are ready for dispatch and the balance 30 days after dispatch has taken place.

2.3 The customer has a right of retention or the right to offset own claims against those of MONTRATEC only insofar as the customer’s claims are undisputed or validated.

3. DELIVERY, TERM FOR DELIVERY

3.1 Partial delivery is admissible insofar as is reasonable for the customer.

3.2 The terms for delivery indicated by MONTRATEC are without engagement and are only approximate unless fixed dates were expressly agreed. Terms are relevant only if and when MONTRATEC has received from the customer the documents, records or data, approvals and releases necessary for executing the order and has received agreed payments in due time. If the customer has not performed his obligation to cooperate, the terms for delivery shall be extended by a reasonable period.

3.3 The term of delivery begins no earlier than upon the customer’s receipt of the order confirmation. The term for delivery is observed if, within that term, the delivery item has let the customer's works, whose notification has been given that it is ready for dispatch. Delivery period days are working days.

3.4 If the customer demands an amendment of the order after the contract has been concluded and such amendments affect the term for delivery dates shall be agreed anew; in cases of doubt, the term of delivery shall be extended commensurately.

3.5 If dispatch is delayed due the reasons for which the customer is responsible, then, beginning one month after notification of the readiness for dispatch, the customer shall bear the storage costs incurred by MONTRATEC, at least the warehousing costs amounting to 0.5% of the net invoice value for every commenced month. The customer is entitled to provide evidence of a lower loss. MONTRATEC is entitled to dispose otherwise of the delivery has expired, and to supply the customer reasonably prolonged delivery dates.

3.6 In cases of force majeure or other circumstances for which MONTRATEC is not responsible (e.g. measures taken by authorities, strike, interruption of operations, problems in the procurement of material, interruption of traffic, etc.), the terms of delivery, including confirmed ones, shall be extended by an appropriate period. The foregoing also applies if the above-described circumstances arise when delivery is already in arrears. If such circumstances render performance impossible or unreasonable for MONTRATEC, MONTRATEC shall be released from its obligation of performance.

3.7 If delivery is delayed – including delays when delivery has already been in delay – due to a default of the delivery the customer is responsible on the part of the sub-supplier, the term of delivery shall be extended accordingly.

3.8 The customer is entitled to withdraw from the contract if it becomes definitively impossible for MONTRATEC to effect full performance before risk passes. If the impeded delivery occurs during the dispatch in taking delivery or if the customer is solely or predominantly responsible therefore, the customer remains obliged to give consideration.

4. SCOPE OF DELIVERY, ASSEMBLY

4.1 MONTRATEC reserves the right to improve the equipment accordingly the technical progress, provided that this doesn’t affect an disadvantage for the customer.

4.2 All constructional measures (e.g. work on flooring, openings in walls and roof, foundation bases, acid protection for flooring), all supply and drain lines (e.g. connections for water, waste water, supply and exhaust of air an compressed air) along the installation, as well as connection to the central supply and drainage networks), the main electrical distributor (including fuses and isolating switches up to the switch cabinet) are not included in scope of delivery.

4.3 Personnel and equipment for unloading the installation at the customer’s plant, as well as transport within the plant to the place of installation are not included in the scope of delivery.

4.4 With respect to the installation / assembly the General-Terms for installation Work of MONTRATEC shall apply.

5. PASSING OF RISK

5.1 The risk for the delivery item passes to the customer upon notification that is ready for dispatch. If not later than when leaves the manufacturer’s works. This is also applies for deliveries by instalments and for cases in which MONTRATEC has taken over forwarding costs or delivery and installation of the goods.

5.2 A transport insurance policy or other insurance policy is taken out only at the customer’s express request and at the customer’s expense.

6. RESERVATION OF TITLE

6.1 The delivered goods remain the property of MONTRATEC until such goods are retailed. Therefore, all claims arising from the business relations have been settled. This provision also applies if some or all claims have been included in a current account and the balance has been struck and recognized.

6.2 If the goods sold with retention of title are combined with other articles to form a unitary item and if the other item is to be regarded as the main item, the customer is obliged to transfer co-ownership on a pro rata basis to MONTRATEC, insofar as the main item belongs to the customer.

6.3 If the customer resells the supplied goods as designated, he at the present juncture assigns the claims against his customers accruing from the resale, including all ancillary rights, to MONTRATEC until all MONTRATEC’s claims have been settled. If good reason is given, the customer is liable to credit MONTRATEC with the pro rata value of the remaining claims. In a particular case MONTRATEC shall be informed of the notification of the assignment and to give MONTRATEC the information and documents necessary for asserting its rights.

6.4 The customer engages to sell the goods supplied by MONTRATEC only subject to the provisions that said customer has resold said goods until the purchase price has been paid in full and said customer stipulates that if the retention of title lapses due to the goods being resold, combined, produced or processed, the retention of title shall be superseded by the new item or to the claim arising thereby.

6.5 In the event of failure to pay on the due date or in the event of a petition to commence insolvency proceedings on the customer’s property, MONTRATEC is entitled to claim the immediate return of goods sold with retention of title. No withdrawal from the contract is constituted by the goods being taken back. At the same time all claims become immediately due for payment.

6.6 If the value of the existing securities surpasses the debts to be secured by more than 20%, MONTRATEC is obliged at the customer’s request to release those securities exceeding the value of 120% of MONTRATEC’s claims. MONTRATEC is entitled to select the securities to be released.

6.7 The customer is obliged to insure the goods sold with retention of title against every insurable damage or loss. The customer shall assign his claims from the insurance contracts in advance to MONTRATEC and, at MONTRATEC’s request, shall furnish evidence of the contracts having been concluded.

6.8 The customer shall inform MONTRATEC immediately of third party attachment to goods sold with retention of title or of claims superceding such and shall append documents.

7. WARRANTY AND LIABILITY

7.1. MONTRATEC gives the warranty described below for defects as to quality and defects of title to the exclusion of further rights.

7.2. Parts, which were defective when risk was passed, MONTRATEC shall elect whether to rectify their defects or to replace them. Complaints in respect of a default or to replace them. Complaints in respect of a defect and objections must be immediately in writing and returned parts become the property of MONTRATEC and are to be returned there. Warranty for wear parts is excluded.

7.3. The regular period of warranty is 12 months from the delivery, but not more than 14 months from the notice of readiness for dispatch. The warranty period for spare parts is 6 months from delivery.

7.4. The period of warranty pursuant to paragraph 7.3 is reduced to 2000 operating hours if the delivery item reaches the said number of hours within the 12 month period.

7.5. In case of replacement, MONTRATEC shall bear the costs for the replacement part, including forwarding costs. If the place of delivery originally contractually agreed, but not the delivery item reaches the said number of hours within the 12 month period.

7.6. If rectification of defects or replacement is impossible or has failed at least twice or has not been carried out by MONTRATEC despite a reasonable period of time having been set, it is admissible for the customer to claim reduction of the purchase price, to withdraw from the contract or to claim damages. The condition for asserting damages is that the customer proves that MONTRATEC is at fault.

7.7. MONTRATEC does not give any warranty for defects or damage which, without fault on MONTRATEC’s part, have resulted from inappropriate or improper use, incorrect assembly or commissioning, excessive overload, natural wear, incorrect or negligent treatment, inappropriate operating material or equipment, chemical electro-chemical or electrical influences (insofar as such are not preconditioned in the contract).

7.8. If the customer or third parties rectify defects without the express consent of MONTRATEC, MONTRATEC is not obliged to carry out any further rectification of defects on the item or part thereof or to bear the costs. MONTRATEC’s liability for defects is limited to the net value of the goods of the consignment and to the cost of the attempt.

7.9. The Liability of MONTRATEC for damages is excluded insofar as is permitted by law. All exemption of liability does not apply for damages caused intentionally or by gross negligence or if the fault should concern a cardinal obligation and/or an owner or a director of MONTRATEC. The exemption from liability shall moreover not apply in cases in which MONTRATEC is held liable for personal injury to life, to the body or to health or in case of an infringement of the Product Liability Act (Produkthaftungsgesetz).

7.10. MONTRATEC’s liability is limited to the net value of the goods of the consignments from which the defective item originates. The liability is always limited to typically foreseeable damage. In no case the customer shall entitled to claim for remote consequent damages (e.g. loss or reduction of production, downtime costs, loss of profit etc.).

8. PROPERTY RIGHTS

8.1 MONTRATEC confirms that the delivery item is free from third party property rights and MONTRATEC is entitled to dispose of all rights. The customer shall inform MONTRATEC forthwith of third party claims against him owning to allowing infringement the property rights associated with the delivery item or if the customer obtains knowledge of the infringement of such property rights by third parties.

9. MISCELLANEOUS

9.1. The place of performance and jurisdiction shall be the place of the registered office of MONTRATEC.


9.3. The invalidity of any provision of these terms and conditions does not affect any part of the remaining provisions. The invalid provision will be replaced by one best achieving the economic purpose originally aimed at.

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