

GENERAL TERMS OF SALE
of
Modine Europe GmbH

1. Scope

Sales and deliveries by Modine Europe GmbH (hereinafter referred to as "MODINE") shall be made exclusively in accordance with the following Terms of Sale, which shall be accepted by Customer by the placing of an order or the receipt of delivery. They shall also apply to all future transactions of MODINE with Customer. The application of Customer's conflicting or supplementary terms and conditions shall be excluded, even if such terms and conditions are not expressly objected to by MODINE.

2. Conclusion of Contract

- 2.1 Offers by MODINE shall be non-binding. A contract shall not become effective until it has been confirmed by MODINE in a written confirmation of order and shall be governed exclusively by the contents of the confirmation of order and these Terms of Sale. Oral agreements or promises are only valid if they have been confirmed by MODINE in writing.
- 2.2 MODINE retains all rights in the sales documentation (in particular pictures, drawings, data on size and weight) and the samples. These items must not be made available to third parties and must be returned to MODINE without undue delay on demand.

3. Delivery Periods and Deadlines

- 3.1 Delivery deadlines and delivery periods are only binding if they have been confirmed by MODINE in writing and Customer has provided MODINE in a timely manner with all of the information or documentation required for the

performance of such delivery and Customer has paid any advance payments in the manner and amount as agreed upon by the parties. Delivery periods agreed upon by the parties shall begin on the date of the confirmation of the applicable order. In the event of additional or supplementary contracts, the delivery periods shall be extended accordingly.

- 3.2 Events which are unforeseeable, unavoidable and lie beyond the sphere of influence of MODINE and for which MODINE does not bear responsibility, such as Acts of God, war and natural disasters, shall release MODINE for the duration of such event from its obligation to make timely delivery or perform timely. Periods agreed upon between the parties shall be extended by the length of such disturbance, and Customer shall be informed of the occurrence of such disturbance in a reasonable manner. If the end of such disturbance is not foreseeable, or should it continue for more than two months, each party is entitled to rescind the contract.
- 3.3 If deliveries by MODINE are delayed, Customer shall only be entitled to rescind the contract if MODINE is responsible for the delay and after a reasonable grace period set by Customer has expired.
- 3.4 Should Customer be in default of the acceptance of delivery or should it be in breach of any other obligations to cooperate with MODINE, MODINE shall be entitled to reasonably store the object of delivery at Customer's risk and expense, without prejudice to its other rights.
- 3.5 MODINE may make partial delivery for good reason.

4. Shipment, Passage of Risk, Insurance

- 4.1 In the absence of any other instruction by Customer, shipment shall be made using a reasonable method of shipment in the usual manner of packaging.

- 4.2 The risk shall pass to Customer upon delivery of the object of delivery to the shipment company or delivery of the object of delivery to Customer itself. Should the delivery or shipment be delayed on grounds for which Customer bears responsibility, the risk shall pass to Customer on the date of the notification to Customer of the readiness of the object of delivery for shipment.
- 4.3 Insurance shall be taken out only upon request and at the expense of Customer.

5. Prices, Terms of Payment

- 5.1 Unless the parties have agreed upon a certain price, the price shall be determined by the price list of MODINE as applicable at the date of the conclusion of the contract.
- 5.2 In the event the agreed delivery date is more than four months after the conclusion of the contract and MODINE has to bear an unforeseeable increase in costs with regard to the object of delivery after the conclusion of the contract, MODINE may reasonably be entitled to increase the agreed price respectively.
- 5.3 With regard to contracts for the performance of continuing obligations such as long-term supply contracts MODINE shall be entitled to increase its prices reasonably as of January 1 of each calendar year in the same amount as MODINE had to bear increases in costs with regard to the object of delivery in the preceding year. MODINE shall inform Customer in writing about the intended price increases at the latest eight weeks prior to their coming into effect.
- 5.4 All prices of MODINE shall be ex works exclusive of statutory VAT in the respective applicable amount and do not include any shipment and packaging costs, which will be charged separately. Customer shall bear any possible public charges such as customs duties, which may arise in connection with the import of goods.
- 5.5 Each invoice of MODINE shall be due for payment without any deductions within 30 days of the date of invoice; if this period for payment lapses

unsuccessfully Customer shall be in default. Payments by Customer shall not be deemed to have been made until MODINE has received such payment.

- 5.6 In the event that Customer is in default, MODINE shall be entitled to demand default interest in the applicable statutory amount. The assertion of a claim for further damages due to the default shall remain unaffected.
- 5.7 Bills of exchange and checks shall only be taken on account of performance upon special arrangement and without any bank charges or other costs for MODINE.
- 5.8 Customer is only entitled to a set off if its counterclaim is uncontested or has been finally adjudicated.
- 5.9 Customer is only entitled to assert a right of retention to the extent that its counterclaim is based on the same contract and is uncontested or has been finally adjudicated.
- 5.10 If MODINE becomes aware of the risk of Customer's impossibility to perform ("mangelnde Leistungsfähigkeit") after the conclusion of the contract, MODINE shall be entitled to only make any outstanding deliveries against prepayment or the provision of security. If such prepayments or security have not been rendered even after the expiration of a reasonable grace period granted by MODINE, MODINE may, notwithstanding any further rights, partially or totally rescind individual or all of the contracts. MODINE shall be entitled to assert any further rights.

6. Retention of Title

- 6.1 The delivered goods shall remain the property of MODINE until any and all claims of MODINE arising under its business relationship with Customer have been fully paid.

- 6.2 In the case of open account, this retention of title shall be deemed to be security of the claim for the balance to which MODINE is entitled.
- 6.3 Customer shall only be allowed to sell the products subject to retention of title within normal and proper business transactions. Customer is not entitled to pledge the products subject to retention of title, grant chattel mortgages on them or make other dispositions endangering MODINE's title to such products. Customer hereby assigns its claim under the resale of the products to MODINE, and MODINE hereby accepts such assignment. Should Customer sell the products subject to retention of title after processing or transformation or joining of such products with other goods or together with other goods, this assignment of claim shall only be agreed to in the amount of the portion equivalent to the price agreed to between MODINE and Customer plus a safety margin of 10 % of this price. Customer is granted the revocable authorization to collect in trust the claims assigned to MODINE in its own name. MODINE may revoke such authorization and the right to resell the products if Customer is in default of the performance of material obligations such as making payment to MODINE.
- 6.4 Any processing or transformation of the products subject to retention of title by Customer shall always be for MODINE. If products subject to retention of title are processed with other goods, MODINE shall acquire joint ownership of the new goods in the ratio of the value of the products subject to retention of title to the other processed goods at the time of processing. The same regulations applying to the products subject to retention of title shall otherwise apply to the new goods created by processing.
- 6.5 Should the products subject to retention of title be joined with other goods, MODINE shall acquire joint ownership of the new goods in the ratio of the value of the products subject to retention of title to the other goods at the date of joining. Should the joining of the goods occur in such manner that Customer's goods are to be viewed as the main goods, it shall be deemed to have been agreed that Customer shall assign proportionate joint ownership to MODINE. Customer shall hold the joint ownership created in such manner in custody for MODINE.

- 6.6 Customer shall provide MODINE at all times with all desired information concerning the products subject to retention of title or claims assigned to MODINE under this contract. Attachments of or claims by third parties to the products subject to retention of title shall be immediately reported to MODINE by Customer and accompanied by the necessary documents. Customer shall at the same time advise the third party of MODINE's retention of title. The costs of a defense against attachments and claims shall be borne by Customer.
- 6.7 Customer is obliged to treat the products subject to retention of title with care for the duration of the retention of title.
- 6.8 Should the realizable value of the securities exceed all of MODINE's claims which are to be secured by more than 10 %, Customer shall be entitled to demand a release to such extent.
- 6.9 Should Customer be in default of material obligations such as payment to MODINE, MODINE may demand back the products subject to retention of title and otherwise realize upon them for the purpose of satisfying its matured claims against Customer without prejudice to any other rights MODINE may have. In such case, Customer shall grant MODINE or MODINE's agents immediate access to the products subject to retention of title and surrender the same. Should MODINE demand surrender under this clause, this shall not be deemed to be a rescission of the contract.
- 6.10 In the case of deliveries to other jurisdictions in which the foregoing provisions governing the retention of title do not have the same security effect as in Germany, Customer shall do everything to create equivalent security rights for MODINE without undue delay. Customer shall cooperate in all measures such as registration, publication, etc. which are necessary and beneficial to the validity and enforceability of such security rights.
- 6.11 On MODINE's demand, Customer is obliged to insure the products subject to the retention of title appropriately, to provide MODINE with the respective proof of such insurance and to assign the claims arising from such insurance to MODINE.

7. Characteristics, Warranty, Duty to Inspect the Goods

- 7.1 MODINE warrants that the object of delivery has the agreed characteristics upon the passage of risk; these characteristics shall exclusively be determined by the specific agreements made by the parties in writing with regard to the characteristics and features of the object of delivery.
- 7.2 Statements in catalogues, price lists and other information material as well as good descriptions made available to Customer by MODINE shall not be understood as a specific guarantee for the characteristics of the object of delivery; such specific guarantees must be expressly agreed upon in writing.
- 7.3 MODINE reserves its right to change the object of delivery slightly with regard to its construction, material and/or its finish to the extent its agreed characteristics are not changed thereby.
- 7.4 Notwithstanding any warranty rights according to the subsequent provisions Customer shall be obliged to accept delivery of a good with minor defects.
- 7.5 Customer's warranty rights shall require that it inspects the goods upon delivery without undue delay and notifies MODINE thereof in writing and without undue delay, but no later than two weeks following delivery; hidden defects must be notified to MODINE in writing without undue delay upon their discovery.
- 7.6 In the event of any notification of a defect, MODINE shall have the right to inspect and test the goods to which objection was made. Customer will grant MODINE the required period of time and opportunity to exercise such right. MODINE may also demand from Customer that it returns the object of delivery to which objection was made to MODINE at MODINE's expense.
- 7.7 If the object of delivery contains a defect subject to warranty obligation, MODINE shall be entitled to remove the defect at its option by remedying the defect or delivery of a replacement, both free of charge to Customer.

- 7.8 Customer shall give MODINE the necessary reasonable period of time and opportunity for remedying the defect or delivering a replacement. Customer shall only have the right upon having notified MODINE without undue delay to remove the defect by itself or have the defect removed by a third party and demand compensation of its necessary expenses from MODINE in instances of emergency in which the safety of operations is endangered or in order to avert a disproportionately great damage or if MODINE is in default concerning removing the defect.
- 7.9 Items which have been replaced by MODINE must be returned to MODINE.
- 7.10 MODINE shall not assume any warranty for damages caused by inappropriate or improper use, in particular also by the non-observance of the operations instructions, incorrect start-up of operation, faulty treatment or incorrect installation by Customer or unsuitable accessories or unsuitable spare parts or inappropriate repair works or by natural wear and tear, provided that MODINE does not bear the responsibility for such damages. Improper use in the sense of the aforesaid sentence 1 also exists if Customer installs the object of delivery without having obtained MODINE's prior express approval in a product other than the contractually agreed upon product or in a product which has been changed towards the contractual provisions and the object of delivery of MODINE is therefore exposed to working conditions other than contractually agreed upon.
- 7.11 MODINE shall bear the costs for shipment, travel, labor and material which accrue for the purpose of the remedy of a defect or the delivery of a replacement product.
- 7.12 Should a defect not be removed or a replacement not be delivered within a reasonable time period granted by Customer or should the removal of a defect by remedy or the delivery of a replacement fail, should such remedy be unreasonable for Customer or has MODINE refused such remedy according to section 439 subsec. 3 BGB, Customer may demand, at its option, the rescission of the contract, a reasonable reduction of the purchase price or it may claim damages pursuant to para. 8 or the reimbursement of his futile expenses.

- 7.13 The limitation period for the warranty claims shall be twelve months from the hand-over of the object of delivery to Customer.

8. Liability and Damage Compensation

- 8.1 Unless otherwise provided for in para. 8.2 MODINE's liability for damages shall be unlimited according to the statutory provisions.
- 8.2 In the event of slight negligence MODINE shall exceptionally not be liable for the breach of non-material contractual obligations and shall only be liable for the amount of foreseeable damages typical of such contracts in case of the breach of material contractual obligations.

9. Product Liability

Should Customer sell the object of delivery in an unchanged state or upon processing, transformation or joining it with other goods, it shall hold MODINE harmless within the internal relationship between the parties to this contract from product liability claims of third parties, provided that Customer is responsible for the defect causing such liability.

10. General Provisions

- 10.1 Amendments of and supplements to this Contract and/or these Terms of Sale and any side agreements must be in writing. The same shall apply to the amendment of this written form requirement.
- 10.2 If a provision of this Contract and/or these Terms of Sale is fully or partially invalid, the validity of the remaining provisions shall remain unaffected thereby. In such case, the parties undertake to replace the invalid provision by a valid provision coming closest to the commercial purpose of the invalid provision.

- 10.3 Exclusive venue for all disputes arising under the contractual relationship shall be the courts having jurisdiction for MODINE's registered office. MODINE is entitled, however, to sue Customer at any other court having statutory jurisdiction.
- 10.4 The laws of the Federal Republic of Germany shall apply with the exception of the UN Convention on Contracts for the International Sale of Goods (CISG).