

# General Conditions for the export of goods - Cyklop GmbH

## § 1 General Provisions

(1) These General Conditions shall apply, to all business to business transactions between the purchaser and Cyklop as far as similar or related transactions/business dealings are concerned. General terms and conditions of the purchaser are not accepted, and shall only apply if and to the extent that they have been explicitly agreed in writing in specific cases.

(2) When these General Conditions apply to a specific contract, modifications of or deviations from them must be agreed in writing.

## § 2 Definitions

In these General Conditions the following terms shall have the meanings herein assigned to them:

**"contract"** shall mean the written agreement between the parties concerning performance of the works and all appendices, including agreed amendments and additions to the said documents;

**"contract price"** shall mean the payment to be made for the Works;

**"gross negligence"** shall mean an act or omission implying either a failure to pay due regard to serious consequences which a conscientious contracting partner would normally foresee as likely to ensue, or deliberate disregard of the consequences of such act or omission;

**"in writing"** shall mean communication by document signed by the parties, or by letter or fax, electronic mail and by such other means as are agreed by the parties;

**"goods"** shall mean any machinery, apparatus, materials and articles to be supplied by Cyklop under the contract;

**"site"** shall mean the place where the goods are to be erected, including as much of the surrounding area as is necessary for unloading, storage, and internal transport of the goods and the erection equipment;

**"works"** shall mean the goods including the erection and other work to be carried out by Cyklop under the contract; if the works according to the contract shall be taken over by separate sections intended to be used independently from each other, these conditions shall apply to each section separately; the term **"works"** shall then refer to the section in question;

## § 3 Product information, non-disclosure, property of documents

(1) All information and data contained in general product documentation and price lists, whether electronic or in any other form, are binding only to the extent that they are by reference expressly included in the contract.

(2) All drawings and technical documentation relating to the works submitted by one party to the other prior or subsequent to the formation of the contract shall remain property of the submitting party.

(3) Drawings, technical documents or other technical information received by the purchaser shall not, without the consent of Cyklop, be used for any other purpose than that for which they were provided. The purchaser shall observe secrecy in respect of any information, including know-how, documents, plans, drawings, etc. he obtained knowledge of through working with Cyklop. They may not, without the consent of Cyklop, otherwise be used or copied, reproduced, transmitted or communicated to a third party.

(4) If the Contractor acts in breach of this duty of confidentiality, Cyklop shall have the right to demand a liquidated damage of € 50.000 for each separate breach.

(5) Cyklop will provide the purchaser with the documentation and information which are necessary to enable the purchaser to operate the works. Cyklop is not obliged to provide any manufacturing drawings for the goods or for spare parts.

## § 4 Prices and Payment

(1) Prices are valid for delivery Ex Works exclusive VAT, shipping and handling costs which will be charged separately.

(2) The parties agree upon the following payment conditions:

Payment of invoices for assembling/installation: directly without discount;

Payment of invoices for equipment (pneumatical, electrical or manually operated):

30 days after date of the invoice;

Payment of invoices for machines/systems: 40 % immediately on placement of the order, 50 % immediately on delivery, 10 % 30 days after delivery respectively immediately after completion of installation and commissioning.

(3) Cyklop charges an amount of 47, 60 € for administrative expense for all orders of consumables with a value of less than 500 € net.

(4) Cyklop charges an amount of 25 € for administrative expense for all orders of spare parts with a value lower than 100 € net.

(5) In case of default of payment, Cyklop is entitled to charge interest for delay amounting to 5 percentage points above the base lending rate of the Deutsche Bundesbank, starting with the day on which the payment was due.

## § 5 Delivery and Delivery time

(1) Delivery shall be Ex Works (EXW Incoterms 2010). Place of delivery is the Cyklop factory.

(2) The beginning of the delivery time indicated by Cyklop presupposes that the purchaser correctly and in due time complies with his duties.

(3) In case of default of acceptance or of any other culpable breach by the purchaser of his obligation to co-operate, Cyklop is entitled to claim damages including all necessary additional expenditures. Cyklop reserves the right to assert further claims.

(4) In the event of default of acceptance, any risk of loss or damage to the works shall pass to the purchaser on the beginning of the delay.

## § 6 Modifications, deviations; procurement/exercise risk

(1) Cyklop is entitled to make non-essential modifications of material and construction as far as these modifications are without consequence to the agreed price, quality, functional capability or efficiency.

(2) Cyklop reserves the customary production tolerances in respect of adhesive tapes amounting +/- 10 %. Marginal deviations of colour are inevitable and valid and do not entitle the purchaser to any guarantee/warranty claims. Tolerances of +/- 5 % are considered to be agreed upon in respect of all other consumable materials delivered by Cyklop.

(3) Under no event Cyklop assumes the risk of procurement (exercise risk).

## § 7 Passing of risk

The risk of loss of or damage to the goods shall pass to the purchaser when Cyklop puts the goods at the purchaser's disposal, according to EXW INCOTERMS 2010.

## § 8 Purchaser's default

(1) If the purchaser anticipates, that he will be unable to carry out his obligations necessary for completion of the works, including all preparatory work, the ensuring that the conditions for the erection of the goods are fulfilled and that Cyklop has been informed about all relevant regulations and laws, he shall immediately notify Cyklop in writing, stating the reason and the time when he will be able to comply with his obligations.

(2) If the purchaser fails to fulfil correctly and in due time his obligations necessary for beginning,

execution or completion of the works, any fixed date binding Cyklop, loses its binding character. In this event Cyklop may suspend in whole or in part the performance of the contract and may by notice in writing require the purchaser to remedy the default within a final reasonable period. Cyklop shall arrange for storage of the goods at the purchaser's risk and costs.

(3) If performance is delayed by the purchaser's default, he shall nevertheless pay any part of the contract price which, but for such delay, had become due. The purchaser shall reimburse Cyklop for any costs reasonably incurred by Cyklop as a result of the before mentioned measures.

(4) If the purchaser fails to fulfil and to remedy his default within the period set by Cyklop according to § 8 Section 2, Cyklop may by notice in writing terminate the contract. Cyklop shall then be entitled to compensation for the loss suffered because of the purchaser's default.

(5) Storage of the supplied goods at the purchaser's premises is at the purchaser's own risk. The goods supplied by Cyklop must not be stored outside, even if covers, boxes, etc. are placed over the goods for protection. In the event of outside storage Cyklop's liability for defects is excluded.

## § 9 Retention of title

(1) All goods sold to the purchaser shall remain property of Cyklop until paid for in full, including payment for the erection of the goods, to the extent that such retention of title is valid under the applicable law.

(2) The purchaser shall at request of Cyklop assist Cyklop in taking any measures necessary to protect Cyklop's title to the goods in the country concerned.

(3) The retention of title shall not affect the passing of risk under § 7.

## § 10 Liability for defects; Warranty

(1) Pursuant to the provisions of this § 10 Cyklop shall remedy any defect or non-conformity in the Works resulting from faulty design, materials or workmanship. Under no event Cyklop assumes a guarantee for properties and conditions.

(2) Cyklop's liability is limited to defects in the works which appear within a period of 12 months with a daily use for 1 shift (8 hours) from transfer of risk or taking over of the goods. If the daily use exceeds the agreed use, this warranty period shall be reduced proportionately. If taking-over has been delayed for reasons for which the purchaser is responsible, Cyklop's liability for defects shall not be extended beyond 18 months after delivery. The place of supplementary performance is the site of Cyklop in Cologne.

(3) Cyklop's liability for consumable materials is limited to defects which appear in a period of 12 months from delivery. Condition precedent to Cyklop's liability is the appropriate storage of the goods according to the current storage instructions of Cyklop.

(4) The purchaser shall without undue delay, notify Cyklop in writing, describing the defect, of any defect which appears. Such notice shall under no circumstance be given later than 2 weeks after the expiry period given under § 10 sect. 2. If the purchaser fails to notify Cyklop in writing of a defect within the time-limit set forth in this clause, he loses his right to have the defect remedied.

(5) The expiration of the period stated under § 10 Section 2 is suspended with the occurrence of the defect and continues with the effected remedy of the defect.

(6) Provided that the defect may cause serious damage, the purchaser shall immediately inform Cyklop in writing. The purchaser shall bear the risk of damage resulting from his failure so to notify.

(7) On receipt of the notice Cyklop shall remedy the defect without undue delay at his own cost. Provided the expected costs for Cyklop to remedy the defect are unreasonably high, Cyklop may assign a third party to remedy the defect. The purchaser shall remedy minor defects after consultation with Cyklop. The purchaser shall, at his own expense, arrange for any dismantling and reassembly of equipment other than the works to the extent that this is necessary to remedy the defect.

(8) Wear and tear parts are excluded from liability. Condition precedent to Cyklop's liability is the regular, proper and verifiably professionally carried out maintenance, the use of Cyklop materials and wear and spare parts as well as the appropriate storage of the goods according to the current storage instructions of Cyklop. No remedy of a defect shall be considered to be an acknowledgement.

(9) If the purchaser has given such notice as mentioned in § 10 Section 3 and no defect is found for which Cyklop is liable, Cyklop shall be entitled to compensation for all costs incurred as a result of this notice.

## § 11 Limitation of liability

(1) Cyklop shall not be liable for any damage to property caused by the works after competition and whilst in the possession of the purchaser due to negligence. Nor shall Cyklop be liable for any damage to products manufactured by the purchaser or to products of which the purchaser's products form part due to negligence.

(2) If Cyklop incurs liability towards any third party for such damage to property as described before, the purchaser shall indemnify, defend and hold Cyklop harmless.

(3) This limitation of liability neither applies to damages due to gross negligence or intent nor to any product liability (Produkthaftung).

## § 12 Take-back obligation and waste disposal

(1) In respect of new electrical and electronic equipment to which the WEEE-Directive (2002/96/EU) applies, put into circulation after the 13.08.2005, the purchaser shall be liable for the waste disposal according to the provisions of the law.

(2) The same applies to electrical and electronic equipment put into circulation as new equipment before the 13.08.2005.

## § 13 Software

As far as any computer software makes part of the delivery, the purchaser is entitled to non-exclusively use the software and documentation with the determined goods/delivery item. Cyklop reserves all other rights in respect of software, documentation and copies. The purchaser is not entitled to sublicense. The purchaser is not entitled to duplicate, reproduce, modify the software, nor to change or eliminate manufacturer's data and Copyright notice.

## § 14 Disputes; Applicable law

(1) Any dispute, controversy, question or interpretation arising under, out of, in connection with, or in relation to the contract or business relation between Cyklop and the purchaser shall be submitted to, determined and settled by the appropriate competent Court in Cologne. The parties hereby submit to the jurisdiction and venue of any such court.

(2) All business transactions or contracts between Cyklop and the purchaser shall be governed by the laws of Germany excluding the application of the CISG.

## § 15 Severability clause

Should any of the provisions in these General Purchasing Conditions be or become invalid or void, this shall have no effect on the other provisions. The Parties are obliged to replace the invalid provision by an arrangement that comes as close as possible to its original business purpose.