

# **General Terms and Conditions of Sale and Delivery**

## 1. Validity

1) Offers, deliveries and accomplishments result exclusively on the basis of the General Conditions of Sale and Delivery. That is also effective for all future business relationships even if the prestigiousness of these conditions have not been agreed specifically. At the latest, with the uncontradicted acceptance of the delivery, the buyer agrees with the validity of these conditions. General terms and conditions of the buyer are valid as long as they are consistent with these General Conditions of Sale and Delivery. Incidentally, the general terms and conditions of the buyer are not used even if the Spheros company does not dissent specifically.

2) Variations of these General Conditions of Sale and Delivery are only valid if Spheros confirms in writing.

## 2. Offer and conclusion of a contract

1) Offers are subject to change without notice as long as Spheros has not confirmed in writing. Acceptance declarations and all offers have to be confirmed in writing by Spheros to become final. The same is valid for changes or extensions of an appointment.

2) Drawings, illustrations, masses, weights or any other performances are only binding if this is confirmed in writing.

## 3. Prices

1) As long as nothing else has been agreed, Spheros will lead to the 30 days when the quote was submitted regarding the prices. Orders are based on the prices stated in the price lists.

2) Prices are ex works, if not agreed differently. Shipping costs (forwarding agent chosen by Spheros) including packaging will be paid by the buyer. Has the return of the packaging be agreed, the buyer has to give it back to the supplier, even in case of accidental perishing.

## 4. Transfer of Perils

The transfer of risks will be beard by the forwarding agent or any other transporting person at delivery at the latest. The transfer of risks will be transferred to the buyer when goods will be stored at Spheros requested by the buyer.

## 5. Warranty and liability

1) As far as the delivery has been executed in business dealings, the buyer has to examine the delivered goods immediately after receipt. Declared defects and variations of the amount have to be claimed in writing 8 days after receipt of goods at the latest. In case of any defects after the period of limitation that could not have been examined at receipt checking, the buyer has to claim immediately after receipt of goods but in any case within this period of time.

2) At qualified notice of defects, the existing claims will be improved by Spheros. Or the faulty parts will be replaced by goods free from defects with no extra charge. The shipment of the faulty goods has to be free of carrier charges. In case of any defect within Germany, Spheros has to pay the costs of the cheapest return shipment to the buyer. In case of, supplementary performance should fall through or miscarry in two cases that the buyer cannot represent, the buyer can obtain the cancellation of the contract (demission) or reduction of the payment. Improvement or replacement delivery can be effected without approval of statutory duty and does not interrupt the limitation period for the right to claim any damages.

3) The guarantee period for Spheros heating items and roof-top air-conditioning system and Spheros' replacement parts for these items and assets is 24 months. The guarantee period starts with the assembling of the devices or the initial registration, respectively, but ends at the latest 36 months after delivering the good, assets or replacement parts.

4) The assertion of the warranty claim against Spheros presumes that the warranty card has been filled out by the factory and will be sent back to Spheros together with the claimed parts. Furthermore, the double of the warranty card (control card) has to be sent back to Spheros immediately after assembling of the device. Spheros is willing in its sole discretion, not touched by this guarantee rules and without approval of a statutory duty, to bear the assembling and disassembling costs in the frame of its factory times. Assumption for the overtaking of assembling and disassembling costs is that the work will be done by Spheros or from a garage that is accepted by Spheros.

5) For defects that emerge from natural abrasion especially for glow sparking elements, temperature safety or the melting applications, respectively, carbon brushes, inappropriate or incorrect usage, faulty storage, non-compliance of the assembling and operating instructions, faulty or careless treatment or inappropriate resources or coming up by climatic or any other impacts, no liability will be overtaken as soon as these circumstances have not been effected by Spheros. For defects that have been caused by construction mistakes or by choosing the wrong material, no liability will be overtaken, as long as the buyer despite of the previous advice of Spheros has dictated the construction or the material.

6) Further claiming requirements - no matter which kind - are excluded with subject to any limited claim for damages regarding imitation of digit 6.

7) There is only warranty if it is claimed significantly by Spheros in a written form.

## 6. Corporate veil

6.1 Spheros is only liable for any defects - no matter due to which legal ground - if

- a) Spheros has hurt an contractual obligation (cardinal obligation) - that means at least careless or
- b) the damage was caused by culpable negligence or intention by Spheros or
- c) Spheros has overtaken a warranty status.

6.2 In the following cases, the liability of Spheros is limited in case of the typical, predictable damages:

- a) In case of culpable breach of constituent parts (cardinal obligations) that are not carried out culpably or intentionally,
- b) In the case of culpable breach or any other duties by Spheros employees or any other appointees that are no body or leading employee and
- c) In the case of the overtaking of warranty so far as there has not been taken any warranty for the consistency of a commodity.

6.3 In cases of digit 6.2, there is no liability for any collateral damages, consequential harm caused by a defect or escaped earnings.

6.4 Spheros´ liability according to the German product liability law for the injury of life, body and health, for the deceit and fraudulent concealment and the overtaking of a warranty for the consistency of the goods, will remain unaffected.

6.5 The digits 6.1 up to 6.4 are still valid if the goods are one of a class.

6.6 The digits 6.1 up to 6.5 are still valid in case of any damage claims of the buyer against employees or appointments of Spheros.

## 7. Delivery time

1) The agreement of binding delivery times or periods has to be in writing. Is the delivery delayed by circumstances that the buyer has to represent or due to any other reasons that cannot be represented by Spheros then the agreed delivery time or the agreed delivery date extends correspondently.

2) The delivery date is followed when the goods have left the delivering plant.

3) If there is a delay of delivery, the buyer is entitled - after ineffective discharge of an adequate period of grace of at least two weeks, to step back from the contract and to charge the repayment of any prepayment.

## 8. Reservation of proprietary rights

- 1) The goods delivered by Spheros will stay their property until payment has been fully executed.
- 2) Have the goods been mixed up with any other topics or connected so the buyer transfers with the conclusion of the delivery contract its requirements for delivery and its property and co-ownership on the newly made devices to Spheros and stores them with commercial accuracy for Spheros.
- 3) The buyer is not allowed to bond the reserved goods to a third party or to keep it as a safety. But he or her is allowed to alienate the exception choice in proper trading as long as there has been agreed any reservation of proprietary rights. Hereby, the buyer assigns any claims that have been emerged from the secondary purchase or from any other cause in law to the Spheros company. But the buyer is allowed to cancel the given claim any time in its own name to collect for the invoice of Spheros, whereas Spheros will only revoke this accreditation when the buyer has not been willing to pay the invoices.
- 4) If any third party should access to the conditional goods, the buyer will point to the property of Spheros and inform Spheros immediately. In this context, emerging costs will be beard by the buyer.
- 5) In case of any behaviour contrary to contract, especially, if the buyer ceases payments or a request for insolvency, Spheros is entitled to cancel the retention choice or to mark and to step on the factory premises.
- 6) Does the value exceed the existing safety of Spheros the claims altogether by more than 20%, so Spheros approves the safeties on request of the buyer.

## 9. Terms of payment

- 1) If there has not been agreed anything else, the invoices of Spheros´ have to be paid within 30 days at the latest after receipt of invoice and delivery. In case of overstepping the payment period, the buyer will be behind schedule without getting another admonition. In the buyer should not be able to pay in time, Spheros is entitled to account interests of 8% over the base interest (§ 247 BGB). So far Spheros takes any checks or bills, on account of performance, whereas Spheros keeps the right to give back bills and despite of granting immediate payment, when there is a danger that the bills are not covered. Discount and bill charges will be beard by the buyer and are due immediately.
- 2) If Spheros learns about any deteriorated capital relations of the buyer, particularly, the buyer is not able to pay the invoices. Spheros is entitled to execute deliveries only against full payment of part payment or matching payment with delivery. In case of insolvency or if the buyer should not be able to pay, Spheros is entitled to step back from all contracts.

3) The buyer is only entitled for charging when the claims are indisputable or legally confirmed.

## **10. Final conclusions**

1) As far as the buyer is a general merchant, Spheros is the place of delivery and determines the place of jurisdiction for all obligations of the contract.

2) Exclusively Law of the Federal Republic of Germany. Application of UNLaw is not allowed via international trade (CISG).

3) In case of an ineffective regulation, the effectiveness of the other obligations will be untouched.

**Spheros GmbH**  
**Friedrichshafener Str. 9-11**  
**82205 Gilching**