

## **Terms and Conditions of Sale**

The following terms and conditions apply to any sale of products, drawings and auxiliary services (hereinafter collectively "Products") by Büttner Energie – und Trocknungstechnik GmbH, Germany ("Büttner").

### **1. Offer and Acceptance**

Büttner's quotation, proposal or invoice is an offer by Büttner to Purchaser and acceptance of that offer is expressly limited to these Terms and Conditions. Purchaser's order and/or acceptance of the Products sold to Purchaser constitutes an acceptance of Büttner's offer including these Terms and Conditions. The offer together with these Terms and Conditions shall be the sole agreement between Büttner and Purchaser, constituting the entire contract between them and superseding all previous representations, communications, either oral or written. Any variation, amendment, cancellation or waiver of the offer and these Terms and Conditions and the contract resulting from them (the "Contract") and any acceptance of other terms and conditions is binding upon Büttner only by a written acknowledgement signed by an authorized representative of Büttner.

### **2. Delivery**

Delivery shall be ex manufacturer's works or as otherwise specified by Büttner. Any delivery term including but not limited to ex works and F.O.B. shall be construed in accordance with INCOTERMS latest revision. Any dates indicated by Büttner in relation to the Products are binding only if so expressly stated. If Büttner is in delay of a binding date, Büttner shall pay liquidated damages of 0.5% of the price of the Product delayed per each full calendar week of delay, however not exceeding 5% of that price. Büttner will not be liable for any loss or damage resulting from a failure to deliver or delays in any date caused by any event of force majeure or other causes beyond Büttner's reasonable control, such as labor dispute including a strike, slowdown or lockout, government act or regulation, inability to obtain supplies, materials or shipping space, plant breakdown, power failure, delay or interruption of carries, riot, accident, fire, flood, acts of God.

### **3. Inspection**

Within ten business days of delivery of the Products, Purchaser shall inspect the Products to check for conformity. Purchaser shall thereafter notify Büttner in writing of any shortage, loss or damage and any other nonconformity within five business days of inspection. The failure to provide Büttner with such notice within this time period shall constitute an unqualified acceptance of the Products and a waiver of all claims for any non-conformities, including a waiver of any right of revocation of acceptance.

### **4. Cancellation**

The Contract is not subject to cancellation by Purchaser unless Purchaser obtains specific written approval from Büttner. If the Contract is cancelled, Purchaser shall pay Büttner reasonable cancellation charges, for expenses already incurred and commitments made by Büttner in connection with the Contract and performance there under, including Büttner's overheads and anticipated profit.

### **5. Warranty**

Büttner warrants the Products against defects in material and workmanship for one year after the date of readiness of the Products for delivery to Purchaser. This warranty extends only to the Purchaser, is non-transferable and does not cover normal wear and tear or damage caused by improper storage, use, installation, or maintenance, harmful chemicals or pollutants or any other events outside Büttner's responsibility.

In the event that the Products fail to meet this warranty as Purchaser's sole remedy, Büttner will repair or replace, at its option, the defective part(s) free of charge to Purchaser provided that the Purchaser returns the Products to be replaced or repaired to Büttner. Purchaser shall bear the costs of removal, shipment and reinstallation of the Products. Purchaser must allow Büttner access and permission to inspect the Products at their site of installation.

THE WARRANTY OBLIGATIONS AND LIABILITIES OF BÜTTNER, AND THE RIGHTS AND REMEDIES OF PURCHASER SET FORTH IN THIS PARAGRAPH 5 ARE EXCLUSIVE AND ARE IN

LIEU OF ALL OTHER WARRANTIES, OBLIGATIONS, REPRESENTATIONS OR LIABILITIES, EXPRESS OR IMPLIED, ARISING BY LAW IN CONTRACT. CIVIL LIABILITY OR TORT OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER OBLIGATION OR LIABILITY ON THE PART OF BÜTTNER TO ANYONE OF ANY NATURE WHATSOEVER.

## **6. Prices**

The price of the Products stated in Büttner's offer is based upon costs and conditions existing on the date of quotation and is subject to change, until unqualified written acceptance of Büttner's offer by Purchaser.

## **7. Taxes**

Purchaser shall pay in addition to the price all local, state or federal sales, use, excise, privilege, occupational, personal property or other similar taxes, customs duties and any other fees or levies, if any in respect of the sale, delivery and provision of the Products. In the event any such taxes are paid by Büttner, Purchaser will reimburse Büttner therefore forthwith upon demand.

## **8. Payment**

Unless otherwise specified by Büttner in writing, payment shall be made net cash thirty days from the date of invoice at Büttner's account. If Purchaser fails to fulfill the terms of payment or if Büttner has any reasonable doubt at any time regarding Purchaser's financial ability, Büttner may demand different terms of payment and/or decline to make further deliveries and may claim payment of all invoices, even if not yet due for payment.

In the event Purchaser fails to make payment when due, Purchaser shall pay interest at a rate of one per cent (1 %) per month (but not in excess of the maximum rate allowed by law) on the amount of any unpaid payment. Purchaser shall pay, in addition to all other sums payable hereunder, the reasonable costs and expenses incurred by Büttner in connection with all actions taken to collect outstanding payments or to preserve and protect its rights under the Contract, whether by legal proceedings or otherwise including without limitation reasonable attorneys' fees and court costs.

Purchaser shall neither retain payment on account of any claim nor shall Purchaser offset any claim against the purchase price.

## **9. Security Interest**

Büttner reserves a first priority security interest in the Products until the purchase price therefore and any other sums payable hereunder is paid in full by Purchaser. Purchaser hereby grants Büttner a power of attorney to execute any documents including financing statements relating to the Products, to protect Büttner's security interest in the Products.

## **10. Confidentiality**

Purchaser hereby acknowledges that the Products including, without limitation, all specifications, drawings, descriptions and illustrations, is confidential and proprietary to Büttner. Purchaser shall not disclose such information to anyone for any purpose other than for the use of the Products in its manufacturing facility.

## **11. Purchaser Specifications**

Büttner assumes no obligation to check Purchaser's specifications request and other information and disclaims any liability for any errors or omissions in such information.

## **12. Patents, Intellectual Property Rights**

The sale of the Products under the Contract shall not grant to Purchaser any right or license of any kind under any patent, utility model or copyright except for using the Products on a non-exclusive basis for its own manufacturing facility. Software may not be duplicated (except one copy for back-up purposes), reverse-engineered, decompiled and used for or transferred to third parties. Software developed by a third party may be subject to other or additional license terms, which shall apply and be provided to Purchaser with delivery.

In the event a proceeding is brought against Purchaser alleging that the Product, its delivery or use constitutes an infringement of any patent utility model or copyright for reasons others than described in para 3 herein below, Büttner shall at its own expense at its option (i) defend or settle any such claim of which it is promptly notified and will pay all damages and costs awarded to Purchaser in any such infringement proceeding up to the price of the infringing Product, (ii) replace the Product by a non-infringing Product or (iii) take back the infringing Product against return of the price for such Product.

In the event a proceeding is brought against Büttner alleging that the Product, its delivery or use constitute an infringement of any patent utility model or copyright, and if such infringement is based on designs, specifications or instructions by Purchaser, the operation of equipment by Purchaser incorporating the Products or the application of a process by Purchaser while operating such equipment, Purchaser shall, at its own expense, defend or settle any such claim of which it is promptly notified and will pay all damages and costs awarded against Büttner in any such infringement proceeding.

### **13. Indemnification**

Büttner agrees to defend, indemnify and hold harmless Purchaser with respect to claims for bodily injury, including death or damage to tangible property caused by (i) a defect in the Product making it unreasonably unsafe or (ii) the negligence of Büttner, its officers and assigns.

Purchaser hereby agrees, at its own expense, to defend, indemnify and hold harmless Büttner against any and all losses, costs, damages, claims, liabilities or expenses of any kind, including without limitation reasonable attorneys' fees, arising out of or resulting from, directly or indirectly, any injury or death to persons or damage to tangible property caused by (i) designs, specifications or instructions provided by Purchaser for the Products or (ii) the operation of equipment incorporating the Product or (iii) improper use, installation or maintenance of the Products or any use not contemplated in the Contract or contrary to the instructions published by Büttner or the manufacturer of the Product.

### **14. Disclaimer, Limitation of Liability**

BÜTTNER SHALL NOT BE LIABLE FOR ANY CLAIMS, EXPENDITURES, LOSSES, DAMAGES OF ANY KIND, INCLUDING INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL AND/OR PUNITIVE DAMAGES OF ANY KIND AND NATURE UNDER ANY CIRCUMSTANCES, LOSS OF USE, INCOME OR PROFIT, IRRESPECTIVE OF THE LEGAL REASON, ARISING DIRECTLY OR INDIRECTLY OUT OF OR OCCASIONED (i) BY THE SALE, DELIVERY, INSTALLATION USE, REPAIR OR REPLACEMENT OF THE PRODUCTS WHETHER SUCH DAMAGES ARE BASED ON A CLAIM OF BREACH OF EXPRESS OR IMPLIED WARRANTY, TORTUOUS CONDUCT INCLUDING NEGLIGENCE AND STRICT LIABILITY OR ANY OTHER CAUSE OF ACTION, OR (ii) BY ANY OTHER BREACH OF ANY OBLIGATION AND/OR CONDITION OF THE CONTRACT OR OF THE LAW OR ANY REPRESENTATION.

### **15. Severability, Invalidity**

If any portion of the Contract shall for any reason be held by a court of competent jurisdiction to be invalid or unenforceable, the valid and enforceable provisions will continue to be given effect and bind the parties thereto. The invalid or unenforceable provision shall be replaced by a provision which comes closest to the invalid or unenforceable provision.

### **16. Governing Law, Arbitration, Venue**

The Contract for all purposes shall be construed and enforced in accordance with and governed by the laws of Switzerland. All disputes out of or in connection with the Contract shall be exclusively and finally settled by arbitration according to the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed according to said Rules. Venue shall be Zurich, Switzerland.

### **17. Succession**

The provisions of the Contract shall bind and inure to the benefit of the successors and assigns of the parties hereto.