

Hudevad Radiators

Terms of sale and delivery

01.06.2018 - Valid for the United Kingdom

1. Scope

1.1 These terms of sale and delivery shall apply in so far as they have not been superseded by written agreement between the parties. These terms of sale and delivery shall take precedence over any provisions in the buyer's order/acceptance, including any terms of purchase of the buyer. No price quotation by the seller is to be treated as an offer but merely an invitation to treat.

1.2 These terms of sale and delivery shall apply to the products which are marketed and sold under the names of Hudevad, RIObuild and Kampmann (including accessories) by the seller.

1.3 The buyer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under its contract without the prior written consent of the seller.

1.4 The contract constituted by the buyer's order, the seller's acceptance and these terms and conditions together constitute the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

1.5 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

1.6 No variation of the contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

1.7 If any provision or part-provision of the contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the contract.

2. Descriptions, drawings and consultancy

2.1 All information relating to dimensions, capacity, technical and other data as well as prices listed by such means as catalogues, advertisements, pictures, and on the Internet shall not be binding. Such information shall only be binding in so far as it is expressly stated in the seller's order confirmation or other written agreement.

2.2 Drawings and technical documents which the buyer receives before or after the conclusion of an agreement shall remain the property of the seller. Such drawings and technical documents shall not without the seller's consent be used for any other purpose than in connection with the installation and maintenance of the delivered products and shall not without the seller's approval be copied, reproduced or handed over to any third party.

2.3 The seller cannot act as a consultant in connection with building projects. Any advice given in relation to such projects shall be considered as advisory information only.

2.4 Irrespective of the data, material, specifications, drawings, etc. sent by the buyer to the seller – or discussed between the parties – before a quotation is submitted, the wording of the quotation in question shall always prevail.

2.5 Services rendered by the seller shall only include delivery of the products stated in section 1.2, and shall never include the actual installation work or other activities related to the installation of the products.

3. Prices, order confirmations, customised products and delivery

3.1 Quotations shall be prepared in writing by the seller from project to project. Such prices quoted are valid 1 year from date of quotation; similarly prices for ongoing projects / cases are valid 1 year from receipt of order. Subsequently the seller is entitled to adjust prices for both quotations not ordered and quotations already confirmed. All prices stated are exclusive of VAT.

3.2 Should the seller's quotation not stipulate any specific time limit for acceptance, the quotation shall lapse if an acceptance has not reached the seller within 30 days from the date of the quotation.

3.3 Delivery shall be made in accordance with the order confirmation forwarded by the seller. The buyer shall carefully check the order confirmation, sign it and then return it to the seller. In the event of errors in the order confirmation, the buyer shall immediately submit a written objection (by email). Should the buyer fail to submit an objection within 24 hours from the time when the order confirmation was sent, the order confirmation shall be considered to have been accepted by the buyer.

The seller shall not thereafter be liable for any errors of any kind in the order confirmation, including with respect to such matters as product information, types, dimensions, colours, and quantities.

3.4 In case of any customised products, which are products developed and produced specifically for the buyer, the seller shall forward drawings and/or other technical documentation to be approved by the buyer. The buyer shall carefully check the forwarded documentation, sign it and then return it to the seller. In the event of errors in the documentation, the buyer shall immediately submit a written objection (by email).

The seller shall not thereafter be liable for any errors in the forwarded technical documentation.

Upon receipt of a written approval of the technical documentation from the buyer, the seller shall forward a written order confirmation. In the event of errors in the order confirmation, the buyer shall within 24 hours submit a written objection (by email). Should the buyer fail to submit an objection within this time limit, the order confirmation shall be considered to have been accepted by the buyer.

The seller shall not thereafter be liable for any errors of any kind in the order confirmation, including with respect to such matters as product information, types, dimensions, colours, and quantities.

3.5 Any agreements on changes or supplements to the original quotation shall not be binding on the seller without the seller's written confirmation.

3.6 Orders placed cannot be cancelled by the buyer.

3.7 Delivery shall be ex works INCOTERMS 2010.

3.8 Dispatch of products shall be at the buyer's expense and risk. Should the seller not receive any specific dispatch instructions, the seller shall be entitled to choose the means and route of transport.

3.9 The seller is under no obligation to take back products sold. Any return of a product by the buyer is expressly conditioned on the seller's prior acceptance in writing and on the product being returned undamaged in its original packaging. If the seller accepts to take back a product, the seller reserves the right to charge a handling fee (return fee) and to deduct a certain percentage of the price of the product returned (return deduction).

3.10 The seller will only accept a claim from the buyer with respect to loss or damage in transit if the following conditions have been complied with:

- Loss or non-delivery: The buyer shall within 24 hours from receipt of the invoice in question submit a written notification to the seller (by email).

- Damage in transit: The buyer shall within 24 hours from delivery submit a written notification to the seller (by email) – partly in the form of a note on the PoD that the products were received with damages, and partly in the form of photographic evidence at the time of the claim.

- Goods transported by independent carrier: The buyer shall comply with the freight carrier's conditions of carriage for notifying claims for loss or damage in transit.

- Inspection of goods: The seller shall be given all reasonable opportunity to inspect the damaged goods, whereas the buyer in the first instance shall provide the seller with photographic evidence to allow the seller to recoup losses against the insurance company or the carrier as appropriate.

4. Packaging

4.1 If the buyer does not make any special requirements, the products shall be delivered in the usual packaging for the purpose of preventing to the widest possible extent any foreseeable damage to the products.

5. Delivery

5.1 Delivery shall be effected in accordance with the agreed delivery schedule, however, subject to delay due to force majeure, including, but not limited to, strikes, lockout, war, mobilisation, transport impediments, fire etc. Time of delivery shall not be of the essence.

5.2 Should the seller fail to comply with a specified time of delivery and if it is not a question of force majeure etc., the buyer shall be entitled to rescind the purchase. However, the buyer shall only be so entitled if, after the expiry of the time limit stipulated for delivery, the buyer has communicated in writing (by email) to the seller a time limit of not less than 30 working days to effect delivery. If delivery is not effected within this time limit, the buyer shall be entitled to cancel the agreement, however, only as to the delayed part of the delivery.

5.3 The seller shall not be obliged to pay the direct or indirect costs incurred by the buyer in case of delays.

5.4 In such cases where it is the buyer's fault that a delivery is delayed, and in such cases where the

buyer requests the seller to hold back the delivery, the buyer shall be invoiced in accordance with the original order confirmation. In addition to that, the storage rent currently in force for the storage period in question shall be invoiced to the buyer.

5.5 The seller shall not be liable for the buyer's operating loss, loss of earnings, loss of profit or other indirect loss. See also Clause 8.2 hereof.

5.6 The seller's liability for delay shall in its entirety be limited in accordance with the provisions included in Clause 8 hereof.

5.7 The products shall be at the risk of the buyer upon delivery, whether title has passed or not.

6. Payment and default interest

6.1 Terms of payment shall be 30 days net from date of invoice unless otherwise agreed.

6.2 From the due date, the seller shall be entitled to charge default interest calculated on the basis of the Danish National Bank's official discount rate + 7%.

6.3 Accrued interest shall be due for immediate payment and shall be payable prior to any other debt in case of regular payments.

6.4 The buyer shall not be entitled to withhold payment despite any disagreements with respect to such matters as delivery, quality, and complaints or as security for future complaints unless the buyer through the courts of law has had such rights confirmed or has received the seller's prior approval.

7. Defects, warranty and the right to take remedial action

7.1 The seller shall provide a ten-year warranty (a twelve-year warranty on registered products) and a two-year right of complaint on products covered by these terms of sale and delivery. As far as Kampmann products as well as accessories and spare parts (including, but not limited to, hoses, gaskets and seals) are concerned, a two-year warranty and a two-year right of complaint shall be provided.

7.2 No warranty shall be provided for the consequences of such matters as not professionally performed installation, insufficient or not professionally performed maintenance, and failure to replace wearing parts. See also Clause 7.9 hereof.

7.3 It shall be the buyer's duty to prove that the warranty period has not expired.

7.4 In the event that the buyer wishes to lodge a warranty claim, the buyer shall be obliged, within a fortnight from the time when the buyer had become or should have become aware of the fault or defect, to make a written complaint thereof to the seller.

7.5 The seller shall be entitled to choose either repair or replacement.

7.6 The buyer shall not be entitled to remedy any defects himself without the seller's prior written approval.

7.7 The buyer shall be obliged to limit the extent of the damage.

7.8 The buyer shall pay the disassembly costs and the costs of erecting new installations as well as the costs of transport to and from the seller's address related to repair and replacement.

7.9 In case of any constructional modifications of the delivered products or in case of any use/installation contrary to the rules applicable at the time or contrary to any instructions specified by the seller, the warranty shall become void.

7.10 In the event that this warranty comes into effect, the buyer shall to the widest possible extent assist the seller in connection with repair and/or replacement.

7.11 In connection with repair and/or replacement, the buyer shall be obliged to notify the seller in writing if the installation conditions are unusual, or if for instance the access to the heating system is hampered during/after the completion of the building project.

7.12 The seller's liability for defects and warranty liability shall, moreover, in its entirety be limited in accordance with the provisions included in Clause 8 hereof.

8. Limitation of liability

8.1 The buyer shall have no other remedies for breach of contract against the seller than those included in these terms of sale and delivery.

8.2 The seller shall not at any time and for whatever reason be liable for the buyer's operating loss, loss of profit, loss with respect to the buyer's covering purchase, daily fines, liquidated damages and any

other third-party claims or any other indirect and/or incidental loss.

8.3 The seller shall not at any time be held liable for any consequential damage of any kind, including – but not limited to – damage caused by leaks in the products.

8.4 The seller shall not be liable for any corrosion or in case of any faults and defects in the construction of the heating system in which the delivered products form part, insufficient maintenance of such heating system, including, but not limited to, pressure testing where the pressure exceeds the pressure specified by the seller, the presence of chemicals in the circulating water, the presence of oxygen in the heating system, poor water quality in general, pressure fluctuations in the heating system, as well as installation in damp rooms or in other damp and/or corrosive environments.

8.5 If constructional modifications have been made to the delivered products, if the delivered products have not been installed in accordance with the instructions applicable at the time or the guidelines specified by the seller, and in case the buyer himself has remedied or tried to remedy faults or defects in the delivered products, the seller's liability for damages shall cease to exist.

8.6 The costs relating to tests and examinations which may be necessary to identify the cause of the fault/defect in question shall be invoiced to the buyer in so far as it is made probable that the cause can be attributed to the buyer.

8.7 The seller shall not be liable for the product being able to be used as assumed by the buyer or, moreover, for the product having certain characteristics or qualities, or being suitable for certain applications, unless expressly stated in these terms of sale and delivery or unless the seller has thus warranted expressly in writing.

8.8 The buyer's total claim for damages against the seller shall not under any circumstances and for whatever reason exceed 10% of the value of the delivery to which the claim is related, exclusive of VAT, and shall be limited to a maximum amount of DKK 75,000.00 exclusive of VAT.

8.9 Nothing in these conditions shall limit or exclude the seller's liability for:

- a) Death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable).
- b) Fraud or fraudulent misrepresentation.
- c) Any matter in respect of which it would be unlawful for the seller to exclude or restrict liability.

9. Product liability

9.1 The seller shall be liable for defective products pursuant to the general rules of Danish law. See also, however, Clauses 9.2, 9.3 and 9.4 hereof.

9.2 For any product liability which is not covered by mandatory rules on product liability, the following limitations shall apply:

- The seller shall only be liable for personal injuries if it can be proved that the injury is caused by errors or omissions made by the seller or others for whom the seller is responsible. The same shall apply to damage to real property and chattels.

- The seller shall not be liable for any operating loss or other indirect loss.

- The seller shall not be held liable for any product damage, whatever the nature of the damage and its cause, beyond what is covered by the product liability insurance taken out by the seller.

9.3 In the event that the seller is held liable for third party product liability claims where such liability arises due to any act or omissions by the buyer, the buyer agrees to indemnify the seller and keep the seller fully and effectively indemnified against any such liability.

9.4 Should a third party, on the basis of the rules on product liability, make a claim against one of the parties covered by these terms of sale and delivery, the party in question shall be obliged to immediately notify the other party thereof.

10. Product information, consultant's liability and the like

10.1 Generally, the seller shall only be liable for the delivered products corresponding to the specifications stated in connection with the sale, not for the product being suitable for the buyer's use.

10.2 The seller shall only be liable if the seller has

provided separate consultancy services in writing to the buyer directly related to the products sold by way of preparation of project, and such matters as actual calculations and in particular has given information about the usefulness of the products sold for a specifically stated purpose to a buyer who presumably does not possess the necessary expertise in the field – and on the understanding that the buyer has been invoiced for such consultancy services. The seller shall not be liable if the consultancy services in question were rendered on the basis of incorrect parameters (e.g. incorrect data regarding heating systems, insulation, output requirements) provided by the buyer or his consultant(s), agent(s) or representative(s). Thus, the seller shall only be liable for the specifications and outputs which apply to the products sold – not for a possible reduced output caused by surrounding circumstances.

10.3 Should errors be found in product information forwarded by the seller together with a delivery or in any other written material subject to these terms of sale and delivery, the buyer shall be under an obligation, after the buyer has become or should have become aware of the error, to notify the seller thereof.

10.4 The seller's liability shall be limited in accordance with the provisions included in Clause 8 hereof.

11. Retention of title

11.1 Risk in products shall pass to the buyer on delivery.

11.2 Title to products shall not pass to the buyer until [the earlier of]:

- a) The seller receives payment in full (in cash or cleared funds) for such products and all other sums which are due to the seller from the buyer for sales of products, in which case title to such products shall pass at the time of payment of all such sums; and
- b) the buyer resells those products, in which case title to such products shall pass to the buyer at the time specified in clause 12.4; and
- c) the buyer installs the products.

11.3 Until title to products has passed to the buyer, the buyer shall:

- a) Store such products separately from all other goods held by the buyer so that they remain readily identifiable as the seller's property;
- b) not remove, deface or obscure any identifying mark or packaging on or relating to such products; and
- c) maintain such products in satisfactory condition and keep them insured on the seller's behalf for their full price against all risks with an insurer that is reasonably acceptable to the seller.

The buyer shall obtain an endorsement of the seller's interest in the products on its insurance policy, subject to the insurer being willing to make the endorsement. On request the buyer shall allow the seller to inspect such products and the insurance policy.

11.4 Subject to clause 11.5, the buyer may resell or use products in the ordinary course of its business (but not otherwise) before the seller receives payment for the products. However, if the buyer resells the products before that time:

- a) It does so as principal and not as the seller's agent; and
- b) title to those products shall pass from the seller to the buyer immediately before the time at which resale by the buyer occurs.

11.5 If before title to products passes to the buyer the buyer becomes insolvent then, without limiting any other right or remedy the seller may have:

- a) The buyer's right to resell products or use them in the ordinary course of its business ceases immediately; and
- b) the seller may at any time:
 - i. require the buyer to deliver up all products in its possession which have not been resold, or irrevocably in-stalled; and
 - ii. if the buyer fails to do so promptly, enter any premises of the buyer or of any third party where the relevant products are stored in order to recover them.

12. Applicable law and venue

12.1 In so far as the parties' disagreements are not governed by these terms of sale and delivery, the rules of Danish law shall apply, except for those which govern the conflict of laws rules and venue rules.

12.2 Any disputes arising out of deliveries subject to these terms of sale and delivery shall be settled by the ordinary Danish courts with the Court in Esbjerg as the agreed venue.

HUDEVAD
RADIATORS