Scope of application

These terms of sale and delivery ("Terms") apply to all Agreements, as defined below, between Bopil ApS, business reg. no. (CVR) 43599887 ("Bopil") and its business customers ("Buyer") unless the parties otherwise agree in writing. Any changes to or deviations from these Terms must be agreed in writing.

These Terms take precedence over any conflicting terms presented by the Buyer in its order or any other communication to Bopil, regardless of whether Bopil fails to object to such conflicting provisions. The Terms thus apply unless otherwise agreed in writing between Bopil and the Buyer.

Definitions

In these Terms, the following terms have the meanings set out herein:

"Agreement": The parties' agreement on delivery and performance of the Works and all appendices, including any agreed amendments and addenda to such documents.

"Equipment": All machinery, apparatus, materials, objects, documentation, software and other products to be delivered by Bopil under the Agreement.

"Site": The place where the Equipment is to be installed and adjacent areas necessary for unloading, storage and internal transport of the Equipment and installation equipment.

"Works": The Equipment, installation of the Equipment and all other work to be performed by Bopil under the Agreement. If the Works under the Agreement is to be taken over in separate parts, which are to be used independently of each other, these must be placed separately on each part. In such cases, the Works thus refer to the individual part.

1.0 Offer, acceptance and order confirmation

1.1 Unless otherwise stated in the offer, an offer is only binding on Bopil if it is accepted by the Buyer within eight (8) days from the date of the offer.
1.2 If an order confirmation deviates from the Buyer's order by addenda, limitations or reservations and the Buyer does not accept such changes, the Buyer must notify Bopil within eight (8) days. Otherwise, the terms in Bopil's order confirmation will apply.

2.0 Delivery

2.1 Unless otherwise agreed in writing, the Equipment will be Delivered at Place (DAP) at the Buyer's address, see the Incoterms applicable at any time.
2.2 Any risk of loss of or damage to the Works not covered by clause 2.1 shall pass to the Buyer upon handover of the Works, cf. clause 7.8.

3.0 Time of delivery and delay

3.1 If the time of delivery stated by Bopil is exceeded by more than seven (7) days, the Buyer is not entitled to cancel the affected order and claim compensation, but the Buyer is entitled to set a final reasonable time limit within which delivery must be made. This time limit must not be shorter than one (1) week.
3.2 If delivery does not take place within the final time limit set by the Buyer, the Buyer is entitled to terminate the contract and claim compensation for its direct loss. However, the compensation cannot exceed 1% of the net price of the delayed Works for each full week of delay, and the compensation cannot exceed 10% of the net price of the delayed Works in total. Except for this, Bopil assumes no liability for delays or the consequences thereof, nor does the Buyer have any other remedies for breach of contract in connection with delays.

4.0 Notice of defects etc.

4.1 The Buyer is obliged to inspect the Works upon receipt or handover, cf. clause 7.0. If it turns out that the Works suffer from a defect, the Buyer must, if the Buyer wants to rely on the defect, immediately and no later than seven (7) days from receipt of the Works, give Bopil written notice thereof. If the Buyer does not give notice of the defect within the time stipulated, irrespective of whether the Buyer has discovered or ought to have discovered the defect, the Buyer is not entitled to set up claims on account of the defect at a later time.
4.2 If the Buyer has not given Bopil notice of the defect within six (6) months of receipt of the Works and notified Bopil that the Buyer intends to rely on the defect, the Buyer is not entitled to set up claims on account of the defect at a later time. If and to the extent that the Works involves installation work, the six-month deadline is calculated from the date of handover, see clause 7.0.

5.0 Defects

5.1 Provided that the Buyer has given notice of defects in due time, Bopil undertakes to remedy defects attributable to design, material or manufacture through replacement or repair at Bopil's own discretion.
5.2 Bopil's liability does not include defects caused by events arising after the risk for the Works has passed to the Buyer. The liability does not cover e.g. defects arising as a result of the operating conditions deviating from those assumed in the confirmed order or as a result of incorrect, inappropriate or excessive use of the Works. Nor does the liability cover defects caused by inadequate maintenance or incorrect installation by the Buyer, modifications made without Bopil's written consent or repairs carried out by the Buyer in an incorrect manner, or abnormal climatic conditions. Finally, the liability does not cover fair wear and tear.
5.3 The Buyer must return the defective Works to Bopil at the Buyer's expense and risk. The costs of installation and removal are not covered by Bopil's liability for defects.
5.4 If the Buyer is able to remedy the defect where the Works are located, Bopil's obligation to remedy the defect is fulfilled by sending new or repaired Works. In such case, Bopil will send new or repaired Works to the Buyer at Bopil's expense and risk.

5.5 Bopil assumes the same liability for defects for parts of the Works that have been replaced or repaired as applies to the original Works for a period of six (6) months. Notwithstanding the above, Bopil's liability for defects does not apply to any part of the Works for longer than one (1) year from delivery of the original Works to the Buyer.
5.6 If, contrary to expectations, Bopil is unable to remedy a defect within a reasonable time and the defect is material, the Buyer is entitled to terminate the contract and obtain a refund of any purchase price paid for the Works and claim compensation for its direct loss suffered as a result of the defect. However, Bopil's liability for defects is limited to 10% of the net price of the Works.
5.7 Apart from the obligation to remedy the defect by replacement or repair and the Buyer's right to terminate the contract and claim limited compensation in case of material defects, Bopil assumes no liability for defects, nor does the Buyer have any other remedies for breach in connection with defects.

6.0 Installation

6.1 If and to the extent that the Works involves installation work, clauses 6.0 and 7.0 apply.

6.2 The Buyer is responsible to Bopil for ensuring that the installation work is carried out under conditions that comply with applicable laws and regulations for the working environment at the Site. The Buyer must notify Bopil in writing of the safety regulations that apply to personnel at the Site.

6.3 The Buyer must also, at its own expense, provide satisfactory cloakroom, washing and eating facilities for the installation personnel at or near the Site. Unless otherwise agreed, the Buyer must also ensure that Bopil's personnel are provided with board and lodging in the vicinity of the Site in accordance with applicable collective agreements and regulations or as specified in the Agreement.

6.4 At the agreed time, or if no time has been agreed, in good time before installation, Bopil must provide the Buyer with drawings or descriptions showing how the Works is to be installed. Bopil must also provide all information necessary for the construction of the foundations and other bases required by the Works. Bopil must also provide all information necessary to ensure unhindered transport of the Works and necessary installation equipment to and at the Site, and to establish the necessary connections and junctions to the Works. As regards liability for errors in the above drawings, reference is made to clause 5.0.

6.5 The Buyer must carry out the necessary preparatory work in accordance with the drawings, descriptions and information mentioned in clause 6.4. Unless the parties have agreed on a separate time for this, the Buyer's work must be completed in such good time that the foundations and other bases can support the Works, but no later than one (1) week before the installation is to commence. When the preparatory work is completed, the Buyer must notify Bopil in writing.

6.6 Before commencing the installation work, the Buyer must ensure that water and motive power, including compressed air and electricity, to the extent necessary or as agreed between the parties, are available to Bopil at the Site. This shall be done at no cost to Bopil, which shall not pay for the use of said water and motive power. Moreover, the Buyer must make lockable or otherwise protected premises or storage areas suitable for protecting the Works and Bopil's tools and equipment against theft and damage available to Bopil at or near the Site free of charge.

6.7 Bopil shall by written notice provide the Buyer with necessary information about the special risks to the surroundings that may be associated with the installation work.

6.8 No later than when Bopil gives notice that the Works are ready for delivery from the place of manufacture, the parties shall each appoint a representative in writing to represent them during the work at the Site. The representatives must be present at or near the Site during working hours. Unless otherwise agreed, they shall be authorised to act on behalf of their respective parties in all matters relating to the installation work. Where these Terms state that notice must be given in writing, the representatives are always authorised to receive notice on behalf of their respective parties.

6.9 The Buyer must not, without Bopil's consent by written notice, assign any work to Bopil's personnel.

7.0 Handover

7.1 When the installation work is complete, unless otherwise agreed, a handover meeting must be held to determine whether the Works is in accordance with the Agreement. Bopil must notify the Buyer that the Works are ready for handover. Bopil must set a date for the commencement of the handover meeting that gives the Buyer sufficient time to prepare and the opportunity to be represented at the meeting.

7.2 The handover meeting must be conducted in accordance with the technical requirements specified in the Agreement. If the Agreement does not contain such specification, the handover meeting must be conducted in accordance with normal practice and generally applied standards in the country where the Site is located.

7.3 The Buyer must at its own expense provide power, fuel, lubricants, water, raw materials and other materials necessary for the handover meeting and for making final adjustments in connection with such meeting. The Buyer must also at its own expense install the apparatus and provide the labour necessary for the completion of the handover meeting.

7.4 If the Buyer, after having received Bopil's notice under clause 7.1, second sentence, fails to fulfil its obligations under clause 7.3 or otherwise prevents the handover meeting from being completed, a satisfactory handover meeting shall be deemed completed on the date of commencement of the handover meeting specified in Bopil's notice under clause 7.1, second sentence.

7.5 If the handover meeting shows that the Works is not in compliance with the Agreement, Bopil must without undue delay ensure that the Works complies with the Agreement. A new handover meeting must then be held unless the parties agree not to do so, or the deviations are of no significance to the operation of the Works. In the event of a new handover meeting, clauses 7.1 and 7.3 apply correspondingly.

7.6 The Buyer shall be deemed to have taken over the Works when they are in the condition required under the Agreement, and

- a) as soon as the handover meetings have been completed or are deemed to have been completed, or

- b) if the parties have agreed that no handover meeting is to be conducted or when the Buyer receives written notification from Bopil in accordance with clause 7.1, second sentence.

However, any remaining minor adjustment and completion of the Works without operational significance shall not prevent the handover.

7.8 Unless otherwise agreed, the risk for the Works is transferred to the Buyer upon handover.

8.0 Force Majeure

8.1 Bopil is not liable for delay or non-performance of its obligations caused by events beyond Bopil's control, including but not limited to war, riots, civil unrest, vandalism, fire, flood, storm, strike, labour disputes, epidemics, pandemics, injunctions or intervention by public authorities (hereinafter "Force Majeure"), which Bopil could not reasonably have foreseen at the time of confirming an order and which Bopil cannot reasonably overcome or prevent.

8.2 Bopil is obliged to immediately notify the Buyer in writing of a Force Majeure event, and Bopil's obligations are suspended for the duration of the Force Majeure event. If the event lasts more than 30 days, Bopil is entitled to terminate affected orders without liability to the Buyer.

9.0 General limitation of liability

9.1 Bopil is not liable for expenses incurred in vain, loss of production, loss of time, loss due to business interruption, loss of profit, loss of revenue, loss of orders, loss of goodwill, and indirect and consequential loss.

9.2 Bopil's total liability, except for product liability, which is separately regulated below, is per order limited to the net price of the Works.

10.0 Product liability

10.1 Subject to the limitations set out in this clause 10.0, Bopil is liable for product liability damage under Danish law.

10.2 Bopil's product liability is limited to direct loss. Bopil is not liable for operating loss, loss of time, loss of profit and indirect loss due to product liability.

10.3 Bopil's total product liability for commercial property damage is limited to DKK 2 mill. per insurance year. The time at which a product liability claim is set up determines which insurance year the claim is referred to.

10.4 If and to the extent that product liability to a third party should be imposed on Bopil, the Buyer is obliged to indemnify Bopil to the extent that such liability exceeds the above exclusions and limitations of liability.

10.5 The Buyer is obliged to let itself be sued as a co-defendant before the same court that hears product liability claims against Bopil in connection with damage allegedly caused by a defect in the Works.

10.6 If a third party sets up a claim for damages against one of the parties, such party must immediately notify the other party.

11.0 Prices

11.1 Unless otherwise expressly stated, all prices are Ex Works Bopil's warehouse and exclusive of VAT. In addition, the Buyer must pay for delivery.

11.2 Bopil reserves the right to change the price of agreed Works before delivery in the event of changes in taxes, duties, import/export duties, exchange rates, customs duties, freight charges or other costs beyond Bopil's control.

12.0 Terms of payment

12.1 Bopil's terms of payment are as stated on the invoice.

12.2 If the Buyer fails to pay on time, default interest will be charged from the date of the invoice. The rate of the default interest is 2% per commenced month and is added to the amount due at the end of each month.

12.3 If the Buyer does not comply with the agreed terms of payment for previous deliveries, or if circumstances arise after confirmation of an order that give Bopil reason to doubt the Buyer's ability to pay, Bopil is entitled to immediately change the agreed terms of payment to prepayment or alternatively to cancel non-executed confirmed orders without this constituting a breach.

13.0 Retention of title

13.1 Bopil retains title to the Works until payment has been made in full, including any interest and costs.

14.0 Cancellation and postponement of orders by the Buyer

14.1 For certain Works, the Buyer is entitled to cancel a confirmed order or postpone the time of delivery on special terms and conditions and against

payment of a separate fee if a written agreement on this has been made with Bopil.

15.0 Catalogues, descriptions etc.

15.1 Any information regarding weight, dimensions, capacity and technical data in catalogues, descriptions, prospectuses, advertisements, etc. is for guidance only and is binding on Bopil only if and to the extent expressly referred to in the offer and/or order confirmation.

16.0 Any specific requirements of the Buyer

16.1 Specific requirements relating to the Works from the Buyer are binding on Bopil only if confirmed in writing by Bopil.

17.0 Software

17.1 In these Terms, software means the software forming part of the Works and consisting of supplier software and/or sub-licensed software.

17.2 Supplier software is software in which Bopil has the rights. Sub-licensed software is software in which a third party has the rights and which Bopil, with the third party's authorisation, transfers the right of use to the Buyer.

17.3 Unless otherwise agreed, the Buyer has an unlimited, non-exclusive right to use the supplier software when using the Works. The Buyer may transfer this right of use to subsequent buyers of the Works.

17.4 Unless otherwise agreed, Bopil retains the rights in the Supplier's software, even if the software has been produced separately for the Buyer. The Buyer is entitled, at its own risk, to make such adjustments of the supplier software that are within the intended use of the Works.

17.5 Subject to any limitations agreed between the rights holder and Bopil, the Buyer has an unlimited, non-exclusive right to use sub-licensed software when using the Works and to transfer this right of use to subsequent buyers of the Works. Bopil must notify the Buyer of such restrictions in writing at the latest upon confirmation of the order. The Buyer may only make adjustments to sub-licensed software if this has been separately agreed.

17.6 Unless otherwise agreed, Bopil is not obliged to make the source code of the software available to the Buyer. Unless otherwise agreed, Bopil is not obliged to deliver updated versions of the software to the Buyer.

18.0 Intellectual property rights

18.1 Offers, drawings, sketches, designs, specifications, intellectual property rights, and technical data prepared or provided by Bopil remain Bopil's property. The Buyer must treat such material/rights as confidential and must not use it for any purpose other than the purpose for which the material was handed over to the Buyer, and the Buyer must not disclose, copy and/or hand over the information to third party without Bopil's prior written consent.

18.2 In the event of the Buyer's breach of clause 17.1, the Buyer is obliged to pay an agreed penalty of DKK 100,000 per breach to Bopil. If the breach consists of causing and maintaining a specific situation, each commenced week in which the breach is maintained will be considered as one breach. If Bopil's loss as a result of the Buyer's breach exceeds the agreed penalty above, Bopil is entitled to claim compensation for the loss in accordance with the general rules of Danish law. Bopil is also entitled to obtain an injunction without provision of security against the Buyer's unauthorised activities.

19.0 Special provisions for Works on subscription

19.1 Agreements for Works on subscription generally run for the period specified in the Agreement ("Initial Term"). Unless the Agreement is terminated by the Buyer in accordance with clause 19.2, the Agreement will automatically be renewed for a period equal to the period stated in the Agreement ("Additional Term"). Subject to the notice period set out in 19.2, the Agreement is non-terminable on the part of the Buyer during the Initial Term and the Additional Term.

19.2 The Buyer may terminate the Agreement by giving at least 90 days' written notice for expiry at the end of the Initial Term or the Additional Term.

19.3 Bopil retains title to the Works on subscription, as the Buyer only obtains a right to use the Works. The Buyer obtains the right to use the Works when Bopil has received full payment of all amounts due for the Works from the Buyer. The right of use exists for the duration of the Agreement. Upon termination of the Agreement, the Buyer's right to use the Works will cease. This means i.a. that the automatic controls in the Works are removed, after which the Works can only be used manually.

20.0 Governing law and dispute resolution

20.1 These Terms and any confirmed orders are governed by Danish law with the exception of Danish conflict of laws rules.

20.2 Any dispute arising out of or in connection with these Terms and/or a confirmed order, including disputes concerning the existence, validity or termination thereof, shall be settled by the Court in Sønderborg if the Buyer has its place of business in the EU, Switzerland, Norway or Iceland.

20.3 Any dispute arising out of or in connection with these Terms and/or a confirmed order, including disputes concerning the existence, validity or termination thereof, shall be settled by arbitration administered by the Danish Institute of Arbitration in accordance with the rules of arbitration procedure adopted by the Institute if the Buyer has its place of business outside the EU, Switzerland, Norway or Iceland. The place of arbitration shall be Sønderborg. The language of the arbitration proceedings shall be English.

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