

XYPEX GERMANY GMBH - GENERAL TERMS AND CONDITIONS OF SALE

1. APPLICABILITY

1.1 These Terms and Conditions ("Terms") are the only terms that govern the sale of Xypex Germany GmbH, successors and assigns ("Xypex") products ("Xypex Products") to the entity or person purchasing Xypex Products who received and/or are named in a Sales Confirmation ("Buyer").

The Terms shall only apply if the Buyer is not a consumer, but a trader (Section 14 of the German Civil Code (BGB)), a legal entity under public law or a special fund under public law.

1.2. The accompanying proposal and/or purchase order and/or Xypex Price List and/or Order Acknowledgement and/or invoice, as applicable, (each a "Sales Confirmation" and these Terms (collectively, this "Agreement")) comprise the entire agreement between the parties and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral.

These Terms prevail over any of Buyer's general terms and conditions of purchase regardless of whether or when Buyer has submitted its purchase order or such terms. Fulfilment of Buyer's order for Xypex Products (each an "Order") does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.

These Terms shall also govern all future transactions between the parties and shall also apply if Xypex performs delivery despite knowledge of differing or contrary terms.

1.3 Xypex reserves the right to revise or otherwise modify these Terms from time to time and correct all typographical and clerical errors in any Sales Confirmation.

2. ORDER ACKNOWLEDGEMENT, MODIFICATIONS AND CANCELLATION

2.1 All Orders received by Xypex, if accepted, shall be confirmed in writing by an Order Acknowledgement issued by Xypex ("Order Acknowledgement") that is delivered to Buyer. Once an Order Acknowledgement is issued by Xypex, the applicable Order to which it relates is deemed to be final and it cannot be cancelled or modified by Buyer without the written consent of Xypex.

3. PRICES

3.1 Buyer shall purchase the Xypex Products from Xypex at the price(s) (the "Price(s)") set forth in Xypex's Price List that is in force as of the date that Xypex accepts the Order by issuing the Order Acknowledgement and such Price(s) shall be binding on the parties. Unless otherwise agreed in writing, the Price(s) shall be in the currency set out in the Order Acknowledgement.

3.2 All Prices are exclusive of all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs, and taxes;

4. PAYMENTS, SET-OFF AND RETENTION RIGHTS

4.1 Unless otherwise agreed to in writing between the parties, Buyer shall pay all invoiced amounts as communicated in the Order Acknowledgement. Xypex may, at its sole discretion, suspend deliveries of any Xypex Products until all due payment defaults have been cured by Buyer. Xypex may also terminate deliveries or withdraw from Orders, if Buyer does not cure any payment default despite Xypex' remedy request with reasonable notice.

4.2 All late payments shall bear default interest at a rate of 9

percentage points above the respective base rate, calculated daily and compounded monthly ("Late Charge"). Such Late Charge shall be in addition to, and not in lieu of, Xypex's other rights and remedies for Buyer's default or non-performance.

5. WARNINGS, ASSUMPTION OF RISK

5.1 Prior to each use of any Xypex Products, the Buyer or user must always read and follow the warnings and instructions on the Xypex Product's most current product label, Product Data Sheet, and Technical Data Sheet ("Xypex Documentation") provided by Xypex. Nothing contained in any Xypex literature or materials relieve the user or the Buyer of the obligation to read and follow the warnings and instructions for each Xypex Products as set forth in the current Xypex Documentation.

6. DELIVERY, TRANSFER OF TITLE & RISK, STORAGE

6.1 Unless otherwise agreed in the Order Acknowledgement (i) any delivery or shipment dates are estimates only. Xypex is not liable for (a) any loss, damage, cost or expense for any failure to deliver the Xypex Products in accordance with the estimated unbinding delivery or shipment date and/or (b) any delay when the Buyer has not provided all information and documents required for export, transport or import within the required timeframe.

(ii) unless otherwise agreed in writing by Xypex, delivery terms for the Xypex Products shall be Ex-Works (Incoterm 2020) from the applicable Xypex facility (the "Delivery Point").

6.2 Xypex delivery obligation shall always be subject to timely and orderly receipt of the Xypex Products from its own suppliers. If, despite the conclusion of a corresponding covering transaction, Xypex is not supplied in good time for reasons for which it is not responsible, Xypex shall be entitled to withdraw from the Agreement. Xypex shall inform the Buyer immediately of the non-availability and reimburse any counter-performance already made by the Buyer without delay. Any further claims of the Buyer are excluded.

6.3 Unless otherwise agreed in the Order Acknowledgement, risk of loss to Xypex Products shall pass upon delivery at the Delivery Point or upon delivery to Buyer's designated carrier. Upon Xypex Products being delivered at Delivery Point, Buyer shall be the sole responsible for all transport, storage, and use of the Xypex Products. Buyer shall refer to the Xypex Documentation.

6.4 Title to Xypex Products shall pass to the Buyer only upon full payment of their price, principal and incidentals.

7. WARRANTY

7.1 EXCEPT FOR THE WARRANTIES SET OUT IN SECTION 7, NO OTHER WARRANTIES EXPRESS OR IMPLIED SHALL APPLY INCLUDING WITHOUT LIMITATION (A) ANY PARTICULAR WARRANTY OF MERCHANTABILITY; (B) FITNESS FOR A PARTICULAR PURPOSE; (C) WARRANTY OF TITLE; OR (D) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY;

7.2 The statutory provisions on material defects and defects of title shall apply (in particular supplier recourse pursuant to Sections 445a, 445b and 478 of the German Civil Code (BGB)), unless otherwise specified below.

7.3 Xypex warrants that the Xypex Products manufactured by it shall be free from material defects and will be consistent with its normal high quality and Xypex Documentation. The

Buyer shall determine the suitability of the Xypex Product for its intended use and assume all risks and liability in connection therewith.

7.4 Upon receipt of Xypex Products, Buyer shall inspect them promptly and in no event later than 10 days after delivery. In the event of apparent defect, the Buyer shall send, within 10 days of the initial inspection period, a written notice specifying all defects or discrepancies in the quality or quantity of Xypex Products. Claims concerning defects that could not be discovered within the above time limit despite accurate inspection of the Xypex Products must be made in writing and received by Xypex within 10 days from discovery of the defects, and, in any event, not later than 90 days after Buyer's receipt of the Xypex Products. If an abnormality or performance deviation has been observed, Buyer shall immediately stop using Xypex Products and contact Xypex. Failure of Buyer to give notice of any claim within the applicable time period specified above shall be deemed an absolute and unconditional waiver for such claim. In case Xypex Products are duly proven defective, Xypex shall, at its choice, either replace at its own cost such defective Products, or refund the Buyer the price paid.

7.5 The Buyer must return the defective Product to Xypex in accordance with the statutory provisions.

8. EXCLUSIONS FROM WARRANTY COVERAGE

8.1 Any warranty claims of the Buyer are excluded, if Buyer caused or contributed to the Xypex Product failure defect or damages by any of the following: improper handling, use or operation, abuse or misuse, misapplication, negligence, inadequate storage, failure to adhere to the Xypex Documentation which, in the reasonable judgment of Xypex, adversely affect the performance or reliability of the Xypex Product.

9. LIMITATION OF LIABILITY

9.1 Except for liability arising from gross negligence, willful misconduct or fraud, Xypex liability for damages shall be limited to the price paid by the Buyer for the defective Products.

9.2 Liability for consequential damages, indirect damages, as well as for lost profits and loss of use or loss of production damages is excluded. The above limitation of liability does not apply in the event of intent, gross negligence on the part of Xypex, or in the event of clause 9.4, or insofar as liability under the Product Liability Act (ProdHaftG) or other mandatory liability is affected, or in the event of the assumption of a guarantee within the meaning of Section 443 of the German Civil Code (BGB).

9.3 Liability for injury to life, limb and health as well as liability under the Product Liability Act remain unaffected.

9.4 Unless expressly stated otherwise above, our liability is excluded.

10. PRODUCT AVAILABILITY

10.1 All Orders are subject to Xypex Product availability. Xypex shall not be liable to the Buyer or Buyer's customers for damages of any kind arising out of any delay in the performance of an Order. This exclusion of liability shall not apply in case of wilful misconduct or gross negligence of Xypex. Subject to availability and additional fees, rush shipments or pick-ups may be authorized by Xypex at its sole discretion.

11. FORCE MAJEURE

11.1 Notwithstanding anything to the contrary, Xypex shall not be liable for any failure to perform or delay to the extent caused by any event or circumstance (hereinafter "Force Majeure Event") which is (i) unforeseeable and (ii) beyond the reasonable control of Xypex and (iii) which could not have been reasonably

prevented or remedied by Xypex, including without limitation, Acts of God, fires, floods, hurricanes, earthquakes, accidents, explosions, wars, acts of terrorism, embargoes, delays of carriers, sabotage, strikes, labour disturbances, act of governmental authority, state of emergency, shortages of power, or lack of, or inability to obtain, sources of materials, fuel, supplies, or equipment or epidemics and pandemics, endemics, lockdowns.

12. PRODUCT STEWARDSHIP

12.1 Buyer agrees that Xypex Products will be used, handled, stored, transported and disposed of in such a manner as is necessary for the safety and protection of persons, property and the environment, and in accordance with Xypex's recommendations, instructions, and all applicable laws and regulations.

12.2 Buyer shall (i) be responsible for its own and its employees, contractors, subcontractors, customers, and those other persons who the Buyer is responsible for at law, handling, storage, transportation and disposal of any Xypex Products; (ii) make certain that such persons know and understand, the procedures necessary to enable them to comply with the requirements set forth herein and otherwise as required by all applicable laws; and (iii) make certain that such persons are adequately trained in the use, handling, storage, transportation and disposition of the Xypex Products. Buyer further agrees to deliver the most recent edition of Xypex Product literature, including Safety Data Sheets, to all such noted persons and to maintain a written record of such deliveries. Buyer shall only re-sell to those who can handle, use, store, transport and dispose of Products safely.

13. COMPLIANCE WITH LAWS

13.1 Buyer shall comply with all applicable laws, regulations and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement.

13.2 Buyer shall comply with all export and import laws of all countries involved in the sale of the Xypex Products under this Agreement or any resale of the Xypex Products by the Buyer. Buyer assumes all responsibility for shipments of Xypex Products requiring any government import clearance. Xypex may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Xypex Products.

14. FRAUDULENT ACTIVITIES, ANTI-CORRUPTION AND COMPETITION LAWS

14.1 Detection of fraud is critical in preventing business losses. To prevent losses from fraudulent activities, including unauthorized communications and/or unauthorized access to financial, account, or other sensitive information ("Fraudulent Activities"), Xypex encourages Buyer to implement measures within its systems and processes to detect Fraudulent Activities. For any investigation relating to Fraudulent Activities, Buyer shall cooperate in such investigation and take all appropriate corrective measures. To the extent that Buyer incurs any losses relating to Fraudulent Activities, Buyer assumes responsibility and Xypex shall not be liable for any such losses, including financial or reputational.

15. TERMINATION

15.1 In addition to any remedies that may be provided under these Terms, Xypex may terminate this Agreement with immediate effect upon written notice to Buyer for just cause, if Buyer: (a) fails to pay any amount when due under this Agreement and this default is not remedied within a reasonable notice period despite

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Xypex' remedy request; (b) has culpably not otherwise performed or complied with any of these Terms, in whole or in part; or (c) financial circumstances deteriorate significantly; or (d) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, liquidation, reorganization, or assignment for the benefit of creditors; or (e) the opening of insolvency proceedings against the assets of the Buyer is rejected due to lack of assets.

15.2 Xypex may also terminate the Agreement in the event of a change in control.

16. CONFIDENTIAL INFORMATION, REVERSE ENGINEERING

16.1 All non-public, confidential or proprietary information of Xypex, including but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Xypex to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Xypex in writing. Upon Xypex's request, Buyer shall promptly return all documents and other materials received from Xypex. Xypex shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

16.2 Furthermore, the Buyer shall refrain from exploiting or imitating the confidential information in any way for commercial gain. In particular, the Buyer shall not analyse, imitate, reproduce or reverse engineer the confidential information, Xypex Products by means of so-called "reverse engineering" itself or through third parties by dismantling or disassembling, imitate, reproduce or reverse engineer them, unless corresponding rights arise from mandatory statutory provisions or other written contractual arrangements made with Xypex.

17. ENFORCEABILITY

17.1 The invalidity in whole or in part of any part of these Terms shall not affect the validity of the remainder of these Terms. In the event any provision of these Terms is held invalid or unenforceable, only the invalid or unenforceable part of the provision shall be severed, leaving intact and in full force and effect the remainder of the sentence, clause and provision to the extent not held invalid or unenforceable.

18. CONFLICT OF TERMS

18.1 These Terms shall be applicable to, and incorporated by reference into, any sale and distribution, or documentation relating to the sale or distribution, of any Xypex Products. To the extent there is an ambiguity, inconsistency or a conflict between these Terms, and the terms and conditions of any other documentation, including without limitation, a purchase order, request for quotation, Order Acknowledgement or Sales Confirmation, these Terms shall control and supersede any such inconsistency, conflict, or ambiguity. The priority of individually agreed terms remains unaffected.

19. DATA PROTECTION

19.1 Xypex shall comply with the applicable data protection laws (in particular the German Federal Data Protection Act (BDSG) and the General Data Protection Regulation (GDPR)).

20. GOVERNING LAW AND DISPUTE RESOLUTION

20.1 All matters arising out of or relating to the Agreement, including without limitation the sale of Xypex Products, shall exclusively be governed by and construed in accordance with the laws of Germany, excluding the UN Convention on Contracts for the International Sale of Goods (CISG) and without regard to principles of conflict of law.

20.2 In the event of a dispute, disagreement or claim arising out of or relating to the Agreement, or the breach, termination, existence, or invalidity hereof ("Dispute"), the parties shall first attempt in good faith to resolve by negotiation and consultation between themselves. If the parties cannot resolve for any reason, the Dispute will be referred to and exclusively resolved with finality by arbitration administered by the ICC pursuant to its Rules of Arbitration by one arbitrator appointed in accordance with said Rules. The place of arbitration will be Parchim, Germany. The arbitration shall be conducted in English.

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