



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

### **General provisions**

(1) The General Terms and Conditions of Business set out below are an integral part of the contractual relations between us and the customer/buyer. This shall also apply for ongoing business relations including in cases in which the contract is concluded by facsimile or telephone. Terms and conditions of purchase of the customer/buyer that deviate from these terms and conditions shall only be valid in individual cases and only if this has been explicitly confirmed in writing. Fulfilment of the contract by us shall not replace this written confirmation.

(2) The contract shall not come into force until following receipt of our written order confirmation. Up until written confirmation of the order, all quotations shall be without engagement and non-binding.

(3) Subsidiary agreements, amendments or extensions to the present contract require written confirmation by us. This shall also apply for any amendment of this agreement..

(4) The documents belonging to the quotation or the order confirmation, such as drawings and illustrations as well as other information and performance data, shall only be binding if explicitly marked as binding by us. Apart from this, information on the subject matter of the delivery or performance is to be regarded as approximate. In particular, it shall not constitute any guarantee, but rather merely a description and identification of the goods. The same shall apply for any reference to technical regulations such as DIN Standards and similar.

(5) We reserve the right to make alterations and improvements to our articles if these are reasonable for the customer/buyer with consideration for our interests.

(6) We shall retain title and copyright to the documents belonging to the quotation, such as illustrations, drawings and similar. These must not be made accessible to third parties and must be returned to us on request.

(7) The rights of the customer/buyer from the contract are only transferable with our prior consent.

(8) In cases of special production, we are entitled to exceed or underachieve the agreed scope of delivery by up to 10%.

### **Prices and payment terms**

(1) Our prices are to be understood as ex-warehouse or ex-works, strictly net, plus statutory value added tax as well as packing and transport costs.

(2) If no agreement to the contrary has been made on the basis of our quotation or the written order confirmation, payments shall be due as follows without any deductions:

- one third down payment upon receipt of the order confirmation
- one third as soon as the customer/buyer has been notified that the main parts are ready for dispatch or acceptance
- the balance within one month following the passing of risk.

(3) The prices stated in the order confirmation are binding in the event of delivery within four months following conclusion of the contract. In the event of later delivery, we shall be



entitled to increase the prices if circumstances change subsequent to conclusion of the contract, in particular an increase in raw material prices and wage or transport costs. In such cases, price alterations are only possible within the scope of and for the purpose of balancing out the said increases in prices and costs.

(4) Special packing requests of the customer/buyer must be notified to us in writing at the latest four weeks prior to the delivery or dispatch date. Additional costs resulting from this must be reimbursed by the customer/buyer.

(5) The pallets, containers or similar, explicitly marked in the invoice and/or notification of dispatch as loaned packing, must be returned freight-free in a clean and undamaged condition.

(6) At the special, written request of the customer/buyer and against acceptance of the costs by the latter, we shall arrange insurance of the delivery against theft, breakage, damage through transport, fire and water as well as against other insurable risks.

(7) The withholding of payments by the customer/buyer is excluded if the counterclaims are from another contractual relation. If the counterclaim is based on the same contractual relation, the withholding of payments is only admissible if the counterclaims concerned are undisputed or have been determined as legally binding.

(8) The customer/buyer can only declare offsetting against counterclaims if the claims concerned are undisputed or have been determined as legally binding.

(9) Bills of exchange will only be accepted by prior agreement and on account of payment only, as well as subject to the reserve of being discountable. If payment is made by bill of exchange or other remittance documents, the customer/buyer shall bear the costs of discounting and collection, provided nothing else has been explicitly agreed.

(10) If bill of exchange liability of the seller is created in connection with the payment of the purchasing price by the customer/buyer (cheque/bill of exchange procedure), the claim to the selling price shall not expire until redemption of the bill of exchange by the customer/buyer. Payments of the customer/buyer will be treated as collateral up until redemption of the bill of exchange and serve the purpose of securing our bill of exchange risk. If the customer/buyer redeems the bill of exchange, the payment will be offset against the purchasing price.

(11) If the customer/buyer defaults on a claim, either in part or in full, the customer/buyer must no longer sell the items which are our sole or joint property and must hand them over to us upon request.

(12) In the event of default on a claim, we are entitled to withhold deliveries or other performances from all contracts until such time as all claims to which we are entitled against the customer/buyer have been fulfilled. The customer/buyer can avoid this right of withholding through the provision of a joint and several liability guarantee with an indefinite validity from a bank based and licensed in the Federal Republic of Germany in the amount of all outstanding claims. Following unsuccessful expiry of a payment deadline set to the customer/buyer, we shall also be entitled to withdraw from all contracts not yet executed. We reserve the right to assert farther reaching default damage.

(13) The customer/buyer hereby declares his agreement to the fact that we can declare offsetting against claims of the customer/buyer even if the due dates of the reciprocal claims



are different or if payment by one party in cash and by the other party by bill of exchange or customer's bill has been agreed.

### **Basis for credit**

(1) A precondition for delivery is the creditworthiness of the customer/buyer. In the event of us receiving information subsequent to conclusion of the contract which gives reason to believe that the granting of credit in the amount resulting from the order is not without risk, or in the event of facts arising which give rise to doubts in this respect, in particular a major deterioration in the economic situation (forced execution, cessation of payments, insolvency, dissolution of the business, transfer of ownership of the business), we shall be entitled to demand payment in advance or the provision of collateral without consideration for any conflicting previous agreements.

(2) Subject to the same preconditions and following delivery to the customer/buyer, we shall be entitled to inspect the warehouse of the customer/buyer and to take provisional custody of goods subject to our retention of title up until payment without consideration for any conflicting previous agreements. Transport and storage costs shall be for the account of the customer/buyer.

### **Delivery periods and delivery deadlines**

(1) In the absence of any explicit statement to the contrary in the order confirmation, the delivery dates indicated are non-binding and no guarantee will be assumed for adherence to these.

(2) The delivery period shall begin on the date of final confirmation of the order, not, however, before complete clarification of all execution details, in particular receipt of any documents to be provided by the customer as well as receipt of any down payment agreed and due upon conclusion of the contract. Adherence to the delivery deadline also presupposes fulfilment of the contractual obligations of the customer/buyer.

(3) Without prejudice to our rights from default, the agreed delivery period shall be extended by the period during which the customer is in default on his obligations from this or any other contract.

(4) The delivery period shall be considered adhered to if the delivered item has left the works prior to expiry of the delivery period or, in the event of collection by the buyer/customer, is ready for dispatch and the customer/buyer has been notified of this. The customer/buyer cannot reject partial deliveries unless these are unreasonable for the customer/buyer.

(5) The delivery period shall be extended to an appropriate extent in the event of measures within the scope of lawful industrial disputes, in particular strikes and lock-outs, in the own company as well as in third-party companies (irrespective of the lawfulness of the industrial dispute), provided we are not guilty of any failure to take over, to take precautions or to avert; furthermore, in the event of unforeseen occurrences such as mobilisation, war, blockade, import and export bans, special statutory or official regulations, a lack of raw materials or fuel, fire or traffic closures, or force majeure if such hindrances demonstrably have an influence on the completion or delivery of the delivered item and occur in our company, in an upstream company or with a subcontractor or transport company and are not attributable to us, whereby our liability is only excluded for slight negligence. If the above circumstances



lead to impossibility of provision of the performance on our part, we shall also be entitled to withdraw from the contract.

(6) In the event of default on our part, the customer/buyer shall be entitled to the statutory rights. Nevertheless, the buyer/customer can only assert claims for damages given the presence of the preconditions standardised in paragraph four of the section "Passing of risk – liability for defects – claims for damages", whereby, in the event of slight negligence, the level of the default damage incurred is limited to 0.5% for each full week of the delay, subject, however, to a maximum of 5% of the value of the overall delivery, unless the customer/buyer can demonstrate that he has suffered greater damage as a result of the default.

Upon request by us, the customer/buyer is obliged to declare within an appropriate period whether he demands fulfilment despite the default or refuses fulfilment due to the delay.

(7) If dispatch is delayed at the request of the customer/buyer or for reasons for which the customer/buyer is responsible, we shall, with effect from one month following notification of availability for dispatch, invoice the customer/buyer for the costs resulting through storage – in the event of storage in our works at least 0.5% of the invoice amount for each month or part thereof. The assertion of farther reaching rights as a result of default shall remain unaffected.

(8) In addition, we shall be entitled – following the setting and unsuccessful expiry of an appropriate deadline for acceptance – to dispose of the goods in another manner and to supply the customer/buyer anew within an appropriate period or to withdraw from the contract and/or to claim damages.

### **Retention of title**

(1) We shall retain title to the goods delivered by us, as well as to any items resulting from their processing and treatment, until fulfilment of all current and future claims to which we are entitled against the customer/buyer from the business relation, including conditional and time-restricted claims and irrespective of the legal ground. The claim secured in the above sense also includes expenses resulting in connection with the conclusion and execution of the contract, the maintaining of the item and the assertion of the rights to the item reserved by us. These are in particular: costs of acceptance, dispatch, packing as well as interest after the due date and default interest, costs for the setting, storage and insurance as well as the costs incurred by us through the judicial or extra-judicial assertion of our rights.

If legally admissible, we shall, in the event of default on payment by the customer/buyer, also be entitled to assert the rights from the retention of title without withdrawing from the contract.

(2) The customer/buyer is obliged to keep the goods subject to retention of title separately and to mark them separately. Any processing or treatment will be carried out by the buyer/customer for us without this resulting in any obligations for us. If the customer/buyer processes our conditional commodity with other articles owned by him, we shall be entitled to sole ownership of the new items. If the customer/buyer processes our conditional commodity with other articles not owned by him, we shall be entitled to joint ownership of the new items in the ratio of the value of the conditional commodities processed to the other articles at the time of processing and treatment. The customer/buyer hereby transfers to us henceforth any joint ownership shares resulting to him through joining, combining or mixing of the goods



delivered with other items The customer/buyer shall have possession of the items as safekeeper. He shall be liable for his own intentional and grossly negligent conduct, as well as for that of his legal representatives and of persons used by him for the fulfilment of his obligations. The customer/buyer must only sell the goods delivered and the items resulting through their processing and treatment, their joining, combining and mixing in the course of ordinary business dealings, against payment in cash or subject to retention of title. Transfer by way of security, pledging and other disposals that affect our rights are not permitted.

(3) The customer/buyer hereby transfers to us henceforth the claims to which he is entitled from the onward sale or from any other legal ground concerning the conditional commodity in their full amount. This also includes claims for damages as a result of damage to or destruction of the conditional commodity, irrespective of whether these are contractual or statutory entitlements against the party causing the damage, insurance companies or other third parties as well as claims to benefits obtained.

(4) If the conditional commodity is sold by the customer/buyer in a non-processed condition together with own or third-party goods, the customer/buyer shall assign the claims resulting from the onward sale to us in the amount of the value of the conditional commodity. If the share of the purchasing price attributable to the sale of our conditional commodity is higher than the value of our conditional commodity, we shall also be entitled to the additional amount.

(5) If we acquire joint ownership to the new item through processing or treatment of the conditional commodity with goods of other suppliers, the assignment in the event of onward sale shall cover the share of the claim corresponding to our joint ownership share if this can be calculated; otherwise the invoice value of our processed conditional commodity.

(6) If the processing or treatment is carried out within the scope of a contract for work and services or a contract for work and materials, the customer/buyer shall also assign the pro-rata claim to work remuneration – corresponding to the value of the conditional commodity processed – to us in advance.

(7) If the above mentioned claims are included in a current account relation by the customer/buyer, the current account claims are hereby assigned to us in their full amount. Following balancing out, they shall be replaced by the balance which applies as assigned up to the amount accounted for by the original current account claims. This shall apply accordingly for the closing balance in the event of ending of the current account relation.

(8) As long as the customer/buyer fulfils his obligations, the assignment will be treated as a dormant assignment and the customer/buyer will be authorised to collect the claim The customer/buyer must post the amounts received against the assigned claim separately and must keep them separately.

(9) In the event of the contracts concluded by the customer/buyer within the scope of the onward sale of the conditional commodity being invalid or null and void, the customer/buyer hereby assigns henceforth to us the statutory claims to which he is entitled instead of the contractual claims assigned, in particular claims to enrichment, in the same scope.

(10) If and in so far as the registration and/or the fulfilment of other requirements is a precondition for the effectiveness of the retention of title, the customer/buyer is obliged to carry out all actions necessary for this immediately and at his own expense and to make all required notifications.



(11) If bill of exchange liability of the seller is created in connection with the payment of the purchasing price by the customer/buyer (cheque/bill of exchange procedure), the retention of title shall not expire until redemption of the bill of exchange by the customer/buyer as drawee.

(12) If the value of the collateral exceeds our claims by more than 20%, the customer/buyer shall be entitled to demand corresponding release of collateral.

(13) The customer/buyer must notify us immediately of access to the conditional commodity or the assigned claims by third parties and must hand over the documents required for intervention. The costs of the intervention shall be for the account of the customer/buyer.

(14) The costs of return transport of the conditional commodity shall be for the account of the customer/buyer.

(15) If the liabilities of the customer/buyer are settled by direct debit, all of our rights from the retention of title regulated above shall remain until such time as revocation of the debit is no longer possible, in so far as our rights do not continue to apply anyway on the basis of the above rulings.

### **Passing of risk – liability for defects – claims for damages**

(1) All risks shall pass to the customer/buyer upon handover of the delivered item to the freight forwarder or carrier. This shall also apply if partial deliveries are made or if we have also assumed other performances, for example the setting up of the delivered item, as well as in the event of freight-free delivery, cif, fob and similar transport clauses. In cases of transport using our vehicles and staff, all risks shall pass to the customer/buyer upon ending of the loading procedure. If acceptance is required, this shall be authoritative for the passing of risk. This must be carried out immediately by the deadline for acceptance, alternatively following our notification of availability for acceptance. The customer/buyer may not refuse acceptance due to the presence of an immaterial defect.

In the absence of any agreement to the contrary, acceptance tests agreed in the contract will be carried out at our registered business domicile during normal working hours. If the contract does not contain any provisions regarding technical details, the prevailing general practice in the branch of industry concerned in the country of manufacture – i.e. the Federal Republic of Germany – shall be authoritative for the tests.

(2) If dispatch or acceptance is delayed or not carried out as a result of circumstances for which we are not responsible, the risk shall pass to the customer/buyer as from the date of notification of availability for dispatch/acceptance.

(3) We shall provide a warranty for defects to the goods present at the time of the passing of risk in accordance with the present regulations.

#### **a) Material defects**

aa) Obvious or recognised defects must be notified to us by the customer/buyer immediately in writing with immediate cessation of any processing or treatment. Violation of these obligations to examine and notify shall result in exclusion of defect claims.



bb) Initially, the customer/buyer shall be entitled to subsequent fulfilment as defect claim. As such, we shall, at our discretion, initially provide a warranty through repair or replacement delivery or production of a new work. If both forms of subsequent fulfilment involve disproportionate costs as defined in §439, paragraph 3, BGB (German Civil Code) or §635, paragraph 3, BGB, we shall be entitled to refuse both forms of subsequent fulfilment.

cc) In the event of the subsequent fulfilment failing or being justifiably refused by us, the customer/buyer can demand rescission of the contract (withdrawal) or a reduction in the remuneration (reduction in the purchasing price). The customer/buyer shall not be entitled to a right of rescission in the event of only immaterial non-conformity with the contract, in particular in cases of only immaterial defects.

(dd) In particular, no warranty shall be assumed in the following cases:

Unsuitable or incorrect use, defective assembly or commissioning by the customer/buyer or a third party, natural wear and tear, incorrect or negligent treatment, incorrect maintenance, unsuitable operating materials, defective construction work, unsuitable building ground, chemical, electrochemical or electric influences, provided we are not responsible for these.

#### b) Legal defects

aa) If use of the delivered item leads to the violation of industrial property rights or copyright in Germany, we shall, as a fundamental rule and at our expense, obtain the right to continued use for the customer/buyer or modify the delivered item in a manner that is reasonable for the customer/buyer with the result that it no longer violates protected privileges.

If this is not possible at economically appropriate conditions or within an appropriate period, the customer/buyer shall be entitled to withdraw from the contract. Given the preconditions stated, we shall also be entitled to withdraw from the contract.

In addition, we shall indemnify the customer/buyer against claims of the corresponding owners of protected privileges that are undisputed or have been determined as legally valid.

bb) The obligations stated in this section under b) aa) shall only apply if:

- the customer/buyer informs us immediately of violations of protected privileges or copyright asserted.
  - the customer/buyer supports us in an appropriate scope in defence against the claims asserted or makes it possible for us to carry out the modification measures
  - the right is reserved for us to take all defence measures including out-of-court rulings
  - the legal defects are not based on instructions of the customer/buyer
- and
- the violation of rights has not been caused by the customer/buyer having altered the delivered item arbitrarily or in a non contractually-conform manner.

(4) Claims of the customer/buyer for damages are excluded irrespective of their legal ground. This shall not apply if liability is obligatory under the product liability law, in cases of intentional conduct or gross negligence, in cases of damage attributable to us from injury to life, limb or health, failure to respect guarantees or the violation of fundamental contractual



obligations. Nevertheless, compensation for damages for the violation of fundamental contractual obligations shall be limited to contractually typical, foreseeable damage, unless intentional conduct or gross negligence is given or if liability is obligatory in cases of damage attributable to us from injury to life, limb or health or failure to respect guarantees, or as a result of claims under the product liability law.

(5) Advising by our employees shall not constitute either a contractual legal relation or an accessory obligation from the contract, with the result that we shall not be liable for any such advising subject to the reserve of explicit written agreements to the contrary.

(6) The period of limitation shall not be extended by the replacement of parts within the scope of the performance of repair work or by replacement deliveries.

(7) All claims of the customer/buyer for defects shall become statute barred one year following delivery of the goods or – in the event of contracts for work and services – one year following acceptance of the work or service. Rulings to the contrary shall only apply if we have maliciously failed to disclose the defect, or if this involves a construction or goods which have been used for a construction in accordance with their normal use and have caused the defect to this construction.

(8) Claims of the customer/buyer for damages as a result of a defect shall become statute barred one year following delivery of the goods or – in the case of contracts for work and services – one year following acceptance of the work or services. This shall not apply if the defect is the result of intentional conduct or gross negligence or failure to respect guarantees as well as in cases of damages attributable to us from injury to life, limb or health.

(9) Negotiations between the parties shall not lead to interruption of the period of limitation as per §203 BGB.

(10) It is the exclusive responsibility of the customer/buyer to ensure that the goods are suitable for their special purpose in terms of quality and features. Accordingly, a lack of suitability shall not create any claims whatsoever unless we have given explicit written assurance of the suitability of the goods for the envisaged purpose.

Information on characteristics provided by us does not constitute a guarantee in the legal sense. Any manufacturer's guarantees shall remain unaffected.

### **Product liability**

We shall assume product liability in accordance with the respectively applicable laws of the Federal Republic of Germany. Liability over and beyond the statutory rulings is hereby excluded.

### **Use of software**

(1) If software is included in the scope of delivery, the customer/buyer will be granted a non-exclusive right to use the software provided, including its documentation. This will be handed over for use on the corresponding delivered item. Use of the software on more than one system is forbidden.

(2) The customer/buyer must only reproduce, revise or translate the software, or convert from the object code to the source code within the statutorily permitted scope (§§ 69 a f.



UrHG (German Copyright Law). The customer/buyer undertakes not to remove manufacturer's information – in particular copyright notes - or to alter such without our prior, explicit consent.

(3) All other rights to the software and the documentation, including copies, shall remain with us or the software supplier. The granting of sub-licenses is not admissible.

### **Concluding provisions**

(1) We are entitled to process the person-related data, obtained within the scope of the business relation, as defined in the Federal Data Protection Act.

(2) Place of performance and place of jurisdiction for all disputes arising from any transaction covered by these General Terms and Conditions of Business is our registered office – both for legal action taken by us or against us. This provision shall not apply for business dealings with customers/buyers who are neither businessmen as defined in the Commercial Code nor public-law special funds nor juristic persons under public law, nor shall it apply for dealings with a businessman that are not part of the operation of his commercial trade.

(3) The relations between us and the customer shall be governed exclusively by the law of the Federal Republic of Germany, subject, however, to exclusion of private international law, the Hague Convention Relating to a Uniform Law on the International Sale of Goods and the Convention on Contracts for the International Sale of Goods (CISG).

(4) Should individual provisions of these General Terms and Conditions of Business be or become invalid, the validity of the other provisions shall remain unaffected. The invalid provision shall be substituted by the legally valid ruling which corresponds as closely as possible to the purpose pursued with the invalid provision.

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