

## **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. Reference to technical regulations such as DIN standards and similar shall not constitute an assurance of quality by us. This shall also apply to drawings, illustrations, technical information, in particular concerning colour tones in catalogues, lists, offers, order confirmations etc. that are stated as precisely as possible, but which are nevertheless not binding for us as deviations cannot be excluded.

(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. The agreed price must be adjusted by us at our reasonably exercised discretion (Section 315 et seq. BGB).

(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 contract partner from the contract are only transferable with our prior consent.

(8) Our deliveries and services shall apply as contractually conform and accepted if the customer does not comment immediately, at the latest however within 10 days of receipt. In all cases, putting into service by the customer shall apply as contractually-conform acceptance. In addition to sale and commissioning of the goods, all forms of processing or treatment as well as the start of any downstream work for which our services can be regarded as advance performance, shall apply as putting into service by the customer

(9) 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 and subject to value added tax at the respective statutory rate, plus transport costs and the costs of normal packing. Prices stated as freight paid shall apply subject to the proviso of unhindered rail, road and ship transport using the traffic routes that come into consideration. Dead freight shall be for the account of the customer. Special packing will be invoiced separately.

(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 defaults on a claim, either in part or in full, all our claims from the entire business relation shall become due immediately, without consideration for agreements to the contrary. In this case, the customer must no longer sell the items under our sole or joint ownership, and must return them to us at our request. Furthermore, the customer must then no longer collect the claims assigned to us within the scope of the extended retention of title, but rather must inform the third-party debtor immediately of the assignment of the claim to us.

(12) If, in cases of default by the customer on payment of a claim, we are entitled to withdraw from the contract, we shall also be entitled to withdraw from all further contracts not yet executed. Additionally, in cases of default by the customer on payment of a claim, we shall be entitled to withhold fulfilment of all further contracts until complete fulfilment of all claims to which we are entitled against the customer. The customer can avoid this right of retention through the provision of an absolute, indefinite guarantee from a bank, licensed for commercial operations in Germany, in the amount of all outstanding claims. We reserve the right to assert claims for damages.

(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.

(3) We shall also be entitled to the above mentioned rights under Subsections 1 and 2 in the event of failure by the customer to comply with the terms and conditions of payment.

### **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 agreed deadlines shall also apply as complied with through notification of availability for dispatch, if the delivered item cannot be delivered on time or the service cannot be provided on time without fault on our part. 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. The above mentioned extensions of delivery dates shall also apply if the disturbances occur while we are in default.

(6) In the event of culpable failure to comply with a binding delivery date for reasons other than those set out in point IV paragraph 5, the customer can, following expiry of an appropriate period of grace set in writing as well as given the presence of all other statutory preconditions, only withdraw from the contract. Claims for damages cannot be asserted unless we have acted intentionally or with gross negligence.

(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 1.0% 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.

(9) Special acceptance of the goods must be agreed. This acceptance shall take place in our works on the agreed acceptance date. If this acceptance is not carried out within three days of the acceptance.

## **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 is obliged to store the goods subject to retention of title separately and to mark them separately. The customer is not entitled to pledge or transfer goods by way of security if ownership of these has been transferred to us by way of security. The customer is only entitled to sell the goods delivered in the ordinary course of business, in return for cash payment and subject to extended retention of title. Transfer by way of security, pledging and other disposals that endanger our rights are not permitted. Any processing or treatment will be carried out by the customer for us, without this resulting in obligations for us. If the customer processes our equitable liens with other articles owned by him, we shall be entitled to sole ownership of the new items. If the customer processes or mixes our equitable liens 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 goods, transferred by way of security, to the other articles at the time of processing and treatment. The customer hereby transfers to us henceforth any joint ownership shares to which he is entitled as a result of joining or combining or mixing of the goods delivered with other items. If, following processing or treatment, the customer acquires any joint ownership share of third parties to the new item, in particular as a result of payment of the claim of the third party, (joint) ownership shall pass to us. The customer also transfers his claims to acquisition of the joint ownership to us henceforth. The customer will keep the items free of charge and with the diligence of a prudent businessman. He shall be liable for own, intentional or negligent conduct, likewise for that of his legal representatives and of persons used by him for fulfilment of his obligations.

(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.

The exceeding claim from sale of the total item is hereby assigned to us subject to the condition precedent of satisfaction of the secured claim of the jointly entitled supplier(s). The customer hereby assigns to us henceforth any claims against other jointly-entitled suppliers to retransfer of the claim from the onward sale.

(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. The customer is obliged to provide us with evidence of the continued existence of the collateral on request, and to provide all information required for their valuation.

(13) The customer/buyer must notify us immediately of access to the conditional commodity or the assigned claims by third parties, in particular enforcement measures, 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.

(15) If the customer defaults on his liabilities secured by the above mentioned security interests, either in part or in full, or if we become aware of circumstances that can be considered as endangering our rights, we can demand handover of the goods under our ownership without previously declaring withdrawal from the contract or setting a deadline for fulfilment of the payment deadline. The existence of the contract and the customer's obligation shall not be affected by any such demand and by handover of the goods.

### **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) If processed goods are returned for reasons for which we are not responsible, the customer shall bear all risks.

(4) 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.

We shall provide a warranty in accordance with the following regulations for defects to our services present at the time of passing of risk:

- (a) The customer is obliged to check our deliveries immediately and carefully, and to report any complaints. Obvious or recognised defects and variances as well as defects and variances that can be ascertained given thorough examination, must be reported to us by the customer immediately in writing with immediate discontinuation of any processing or treatment. Warranty obligations shall be excluded in the event of violation of the obligations to examine and report, and our performance shall apply as accepted. Farther-reaching statutory obligations and/or responsibilities of the customer shall remain unaffected. The same shall apply to farther-reaching statutory consequences of violation of such obligations/responsibilities.
- (b) If the customer does not give us the opportunity of satisfying ourselves of the defect and/or if he does not provide us with the goods subject to complaint or samples thereof immediately on request, all warranty claims shall lapse.
- (c) In the event of justified, on-time notification of a defect, we shall be obliged to choose between repair, replacement delivery or production of a new item. If both forms of subsequent fulfilment involve disproportionate costs as defined in Section 439 Subsection 3 BGB (German Civil Code) or Section 635 Subsection BGB, we shall be entitled to refuse both forms of subsequent fulfilment. If subsequent fulfilment fails or if we fail to comply with the obligation to make replacement delivery or fail to do so on time, the customer can choose between demanding a reduction in the remuneration or withdrawing from the contract; with divisible deliveries, the customer shall be entitled to these rights only for the defective part of the delivery, unless he is not able to use the defect-free part of the delivery. In the event of only minor non-conformity with the contract, in particular only minor defects, the customer shall not, however, be entitled to a right of withdrawal. If the customer chooses to withdraw from the contract on the basis of a legal or material defect and following failed subsequent fulfilment, he shall not additionally be entitled to damages due to the defect.
- (d) In particular, no warranty shall be assumed in the following cases:  
Unsuitable or incorrect use, defective assembly or commissioning by the customer 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.
- (g) The above limitations of liability do not apply to claims of the customer based on 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. In addition, the limitations of liability shall not apply in cases of injury to life, limb or health of the customer that can be attributed to us.
- (h) Replacement shall only be provided for missing parts if their delivery is documented through a delivery note signed by us and the risk for the missing parts has passed to us. Upon receipt, we shall accept the goods delivered to us by the customer, subject to the reserve of factually correct information concerning the weight or the capacity for finishing. A check will be carried out during production. Consequently, missing parts delivered in large quantities will only be

replaced if their delivery is documented, and the quantity or the weight has been ascertained jointly upon acceptance.

- (i) A defect to a partial delivery shall not entitle the customer to cancel the entire contract.
- (j) Warranty claims based on a defect to our deliveries and services are limited to a maximum of ten times the amount of the net price invoiced by us for the treatment or processing. This limitation of liability shall not apply if a defect causes damage to items or persons; as such the statutory provisions shall apply.

(5) 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 or modify the delivered item in a manner that is reasonable for the customer, 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 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 against claims of the corresponding owners of protected privileges that are undisputed or have been established by declaratory judgment.

The above mentioned obligations shall only apply if

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

(6) 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 express written agreements to the contrary.

(7) 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.

(8) Irrespective of the legal grounds, we shall only be liable for consequential damages of defects, in particular damages to legal interests of the customer, in cases of intentional or grossly negligent conduct - excepted from this ruling are damages occurring as a result of the absence of an agreed feature that is intended to protect the customer against the risk of damage. Slightly negligent conduct on our part shall only result in liability for damages if essential contractual obligations are violated. Essential contractual obligations are only obligations with which compliance is indispensable for achievement of the contractual purpose. In the event of slightly negligent conduct, liability for damages will only be assumed in so far as these were foreseeable at the time of conclusion of the contract or at the time of violation of an obligation.

(9) All claims of the customer 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.

(10) Claims of the customer for damages based on a defect shall become statute barred one year after delivery of the goods or, in the case of contracts for work and services, after 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.

(11) Negotiations between the parties shall not lead to interruption of the period of limitation as per

Section 203 BGB.

(12) It is the exclusive responsibility of the customer 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.

## **VII. Concluding provisions**

(1) Personal data of the customer will be stored in accordance with the German Federal Data Protection Act to enable the performance of tasks as well as written and business matters.

(2) Place of performance and place of jurisdiction for all disputes in connection with any business transaction governed by the present General Terms and Conditions of Business is our registered office – for legal action taken both by and against us. This provision shall not apply to business dealings with customers who are neither businessmen as defined in the German Commercial Code nor public-law special funds nor juridical persons under public law, and likewise not for business transactions with a businessman that are not part of his commercial operation.

(3) The relationship between us and the customer shall be governed exclusively by the law of the Federal Republic of Germany, subject to the exclusion of private international law, the Uniform Hague Sales Conventions and the Vienna UNCITRAL United Nations Commission on International Trade Law.

(4) If individual provisions of these General Terms and Conditions of Business are or become ineffective, the effectiveness of the other provisions shall remain unaffected. It is hereby agreed that the legally effective provision that corresponds as closely as possible to the purpose pursued through the ineffective provision shall apply instead of the ineffective provision.

Recklinghausen, February 2014