

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

### **§ 1 General - Area of application**

- (1) Our Terms and Conditions of Sale shall apply exclusively; we shall not recognize any terms and conditions of the Customer which conflict with or deviate from our Terms and Conditions of Sale unless we have expressly agreed to their validity in writing. Our Terms and Conditions of Sale shall also apply if we carry out delivery to the Customer without reservation in the knowledge that the Customer's terms and conditions conflict with or deviate from our Terms and Conditions of Sale.
- (2) Individual agreements made with the Customer in individual cases (including collateral agreements, supplements and amendments) shall take precedence over these Terms and Conditions of Sale. All these individual agreements made between us and the Customer for the purpose of executing a contract must be recorded in writing or confirmed by us in writing.
- (3) Our Terms and Conditions of Sale shall only apply to entrepreneurs within the meaning of § 310 para. 1 of the German Civil Code (Bürgerliches Gesetzbuch; BGB).

### **§ 2 Offer, Conclusion of contract, Reservation of receiving supply, Country of destination**

- (1) If the order qualifies as an offer in accordance with § 145 BGB, we may accept it within two weeks by sending an order confirmation or by delivering the goods.
- (2) In the case of orders placed electronically, we shall confirm receipt of the order without delay. However, this confirmation of receipt does not constitute an acceptance of the Customer's offer.
- (3) The conclusion of the contract shall be subject to the reservation that we are supplied correctly and punctually by our suppliers. This shall apply only in the event that we are not responsible for the non-delivery, in particular, if a congruent covering transaction has been concluded with our supplier. The Customer will be informed immediately about the non-availability of the service. The consideration will be refunded immediately.
- (4) The goods are only intended for use in the country agreed/specified in the contract. If the contract does not contain any details in this respect, Germany shall be deemed the agreed country of destination.

### **§ 3 Design changes, Protective devices, Cost estimates, Drawings, Software**

- (1) We reserve the right to make changes to the construction, design, and assembly in the period between the conclusion of the contract and delivery, provided that this does not impair the use intended by the Customer and does not reduce the value of our service.
- (2) We retain ownership rights and copyrights to cost estimates, drawings, models, illustrations and other documents; these may only be made accessible to third parties with our prior written consent. Drawings and other documents forming part of our offers, including all copies, must be returned immediately by the

Customer at our request. The above provisions shall also apply mutatis mutandis to the Customer's documents; these may, however, be made accessible to third parties whom we have duly authorized and engaged in the production of the delivery item or to whom we have transferred the delivery.

- (3) Specifications contained in our catalogs, brochures, product information, price lists and the drawings, illustrations and specifications of services contained therein are approximate values customary within the industry and are therefore non-binding. These shall only become part of the contract if these specifications have been expressly confirmed in text form in the contract.
- (4) Our software may only be passed on to third parties and/or duplicated with our written consent. This does not apply to the creation of a backup copy.

#### **§ 4 Prices, Price adjustment clause, Terms of payment**

- (1) Unless otherwise stated in the order confirmation, our prices shall apply "ex works", excluding packaging; this shall be invoiced separately.
- (2) The statutory value added tax is not included in our prices; it is shown separately in the invoice at the statutory rate on the day of invoicing.
- (3) In the case of contracts with an agreed delivery period of more than three months, we reserve the right to increase the prices in accordance with the changes in cost occurring after this point in time, in particular, due to collective wage agreements or changes in material prices, and/or changes in the prices of assemblies/components to be purchased. In the same manner and to the same extent, we shall be obliged to reduce the price immediately in the event of cost reductions. Cost increases and cost reductions are thereby set off. We will immediately notify the Customer in text form of any corresponding change in price and provide evidence to the Customer upon request.
- (4) The deduction of a cash discount requires a separate written agreement.
- (5) Unless otherwise stated in the order confirmation, the net purchase price (without deduction) is due for payment within 30 days of the invoice date. The statutory regulations concerning the consequences of default in payment shall apply.
- (6) The Customer shall only be entitled to set-off rights if his counterclaims have been legally established with final and binding effect, are undisputed or have been acknowledged by us. In addition, he is entitled to exercise a right of retention insofar as his counterclaim is based on the same contractual relationship.

#### **§ 5 Delivery time**

- (1) The start of the delivery period stated by us presupposes the clarification of all technical questions.
- (2) Compliance with our delivery obligation further presupposes timely and proper fulfillment of the Customer's obligation. The defense of non-performance of the contract remains reserved.
- (3) If the Customer is in default of acceptance or culpably violates other obligations to cooperate, we shall be entitled to demand compensation for the loss incurred by us in this respect, including any additional expenses. Further claims or rights remain reserved.

- (4) Insofar as the requirements of para. (3) are met, the risk of accidental loss or accidental deterioration of the object of sale shall pass to the Customer at the point in time at which the Customer is in default of acceptance or at the point in time of debtor's delay.
- (5) We shall be liable in accordance with the statutory provisions insofar as the underlying purchase contract is a fixed-date transaction within the meaning of § 286 para. 2 no. 4 of the German Civil Code or § 376 of the German Commercial Code (Handelsgesetzbuch; HGB). We shall also be liable in accordance with the statutory provisions if, as a result of a delay in delivery for which we are responsible, the Customer is entitled to assert that his interest in the further performance of the contract has ceased.
- (6) Moreover, we shall also be liable in accordance with the statutory provisions if the delay in delivery is due to an intentional or grossly negligent breach of contract for which we are responsible; fault on the part of our representatives or vicarious agents shall be attributable to us. If the delay in delivery is due to a grossly negligent breach of contract for which we are responsible, our liability for damages shall be limited to the foreseeable, typically occurring damage.
- (7) We shall also be liable in accordance with the statutory provisions if the delay in delivery for which we are responsible is based on the culpable breach of an essential contractual obligation; in this case, however, the liability for damages shall be limited to the foreseeable, typically occurring damage.
- (8) If we are unable to meet agreed delivery periods for reasons for which we are not responsible (non-availability of the service), we shall inform the Customer about this without delay and at the same time inform the Customer of the expected new delivery period. If the service is not available even within the new delivery period, we shall be entitled to withdraw from the contract in whole or in part; any consideration already provided by the Customer shall be reimbursed immediately. If the agreed delivery period cannot be met due to the fact that delivery to us by a supplier was delayed, this shall only apply if we have concluded a congruent covering transaction.
- (9) Further legal claims and rights of the Customer remain reserved.

## § 6 Transfer of Risk - Packaging costs

- (1) Delivery shall be effected in accordance with the commercial term stipulated in the individual contract, the interpretation of which shall be governed by the Incoterms in the version valid at the time of conclusion of the contract.

If the individual contract does not contain a commercial term, delivery will be made in accordance with **EXW Incoterms 2010 (ex works)** at 01259 Dresden, Fritz Schreiter Strasse 32, Germany.

The Customer shall bear the costs of packaging appropriate for the transport.

- (2) Separate agreements shall apply to the return of packaging.
- (3) If the Customer so wishes, we shall cover the delivery with transport insurance; the costs incurred in this respect shall be borne by the Customer.

## **§ 7 Liability for defects**

- (1) The Customer's claims for defects presuppose that he has properly fulfilled his obligations to inspect and give notice of defects according to § 377 HGB (German Commercial Code).
- (2) In the event that there is a defect in the object of sale, we shall be entitled, at our discretion, to supplementary performance in the form of rectification of the defect or delivery of a new defect-free item. In the event of supplementary performance, we shall bear the necessary expenses only up to the amount of the purchase price.
- (3) If the supplementary performance fails, the Customer shall be entitled, at his option, to withdraw from the contract or demand a reduction .
- (4) We shall be liable in accordance with the statutory provisions insofar as the Customer asserts claims for damages based on intentional or gross negligence, including intentional or gross negligence on the part of our representatives or vicarious agents. Insofar as we are not charged with intentional breach of contract, liability for damages shall be limited to the foreseeable, typically occurring damage.
- (5) We shall be liable in accordance with the statutory provisions insofar as we culpably violate an essential contractual obligation. However, in this case too, our liability for damages shall be limited to the foreseeable, typically occurring damage.
- (6) Insofar as the Customer is otherwise entitled to compensation for the damage instead of performance owing to a negligent breach of duty, our liability shall be limited to compensation for the foreseeable, typically occurring damage.
- (7) Liability for culpable injury to life, limb or health shall remain unaffected; this shall also apply to the mandatory liability under the Product Liability Act.
- (8) Unless otherwise agreed above, liability shall be excluded.
- (9) The limitation period for claims for defects is 12 months, calculated from the transfer of risk. This shall not apply if the object of sale is normally used for a building and has caused the defect.
- (10) The limitation period in the case of a delivery recourse claim according to §§ 478, 479 BGB remains unaffected; it is five years, calculated from the delivery of the defective item.

## **§ 8 Joint and several liability**

- (1) Further liability for damages than provided for in § 7 is excluded - irrespective of the legal nature of the claim asserted. This applies in particular to claims for damages arising from fault , other breaches of duty or claims in tort for compensation for material damage in accordance with § 823 BGB.
- (2) The limitation according to para. (1) shall also apply if the Customer demands reimbursement of useless expenses instead of asserting a claim for damages.
- (3) Insofar as our liability for damages is excluded or limited, this shall also apply with regard to the personal liability for damages of our employees, workers, staff, representatives and vicarious agents.

## § 9 Safeguarding retention of title

- (1) We reserve title to the object of sale until receipt of all payments under the delivery contract. If the Customer acts in a manner contrary to the terms of the contract, in particular, in the event of default in payment, we shall be entitled to take back the object of sale. The act of taking back of the object of sale by us shall constitute a withdrawal from the contract. After taking back the object of sale, we shall be entitled to exploit it; the proceeds of such exploitation shall be set off against the Customer's liabilities, less reasonable exploitation costs.
- (2) The Customer is obliged to treat the object of sale with care; in particular, he is obliged to insure it sufficiently at his own expense against damage caused by fire, water and theft at replacement value. If maintenance and inspection work is required, the Customer must carry this out in good time at his own expense.
- (3) In the event of seizures or other interventions by third parties, the Customer must notify us immediately in writing so that we can bring an action in accordance with § 771 of the German Code of Civil Procedure (Zivilprozessordnung; ZPO). In the event that the third party is not in a position to reimburse us for the judicial and extra-judicial costs of an action pursuant to § 771 ZPO, the Customer shall be liable for the loss incurred by us.
- (4) The Customer is entitled to resell the object of sale in the ordinary course of business; however, he hereby assigns to us all claims, in the amount of the final invoice amount (including VAT) of our claim, which accrue to him from the resale in respect of his purchasers or third parties, irrespective of whether the object of sale has been resold without processing or after processing. The Customer remains authorized to collect this claim even after the assignment. Our authority to collect the claim ourselves remains unaffected by this. However, we undertake not to collect the claim as long as the Customer meets his payment obligations from the proceeds received, is not in default of payment and, in particular, no petition has been filed for the opening of composition or insolvency proceedings and payments have not been suspended. If this is the case, however, we can demand that the Customer informs us of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment.
- (5) The processing or transformation of the object of sale by the Customer is always carried out for us. If the object of sale is processed with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of the object of sale (final invoice amount, including VAT) to the value of the other processed items at the time of processing. In all other respects, the same provisions shall apply to the item created by processing as are applicable to the object of sale delivered with reservation.
- (6) If the object of sale is inseparably mixed with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of the object of sale (final invoice amount, including VAT) to the value of the other mixed items at the time of mixing. If the mixing is carried out in such a way that the Customer's item is to be regarded as the main item, it shall be deemed agreed that the Customer shall transfer co-ownership to us on a pro rata basis. The Customer shall keep the sole ownership or co-ownership thus created in safe custody for us.
- (7) In order to secure our claims against him, the Customer also assigns to us the claims against a third party that accrue through the connection of the object of sale with a piece of real estate.
- (8) We undertake to release the securities to which we are entitled at the Customer's request in case the realizable value of our securities exceeds the claims to be secured by more than 10%; the choice of the securities to be released shall be incumbent on us.

## **§ 10 Place of jurisdiction, Choice of law, Place of performance**

- (1) If the Customer is a merchant, our place of business shall be the place of jurisdiction; however, we shall also be entitled to sue the Customer at the court of his place of residence.
- (2) The law of the Federal Republic of Germany shall apply. However, the provisions of the UN Convention on Contracts for the International Sale of Goods are expressly excluded.
- (3) Unless otherwise stated in the order confirmation, our place of business shall be the place of performance.