

## Terms and Conditions of Sale

Status: March 2016

For use in business transactions with entrepreneurs, public law legal entities and public-law special funds.

### 1. General

Our terms and conditions of sale shall apply exclusively; we will acknowledge buyer's contradictory terms and conditions or those deviating from our terms only if we expressly approve their validity in writing.

### 2. Quotation and contract conclusion

2.1 Our offers are subject to alteration without notice and without obligation, unless we have particularly in writing denominated them to be committal. Declarations of acceptance and buyer's orders, if classified as an offer pursuant to Article 145 BGB (*German Civil Code*), only take binding effect if we confirm them in writing. We have twelve business days time to accept buyer's orders from the time of receipt of such order.

2.2 Documents forming part of our offer pursuant to section 2.1, such as illustrations, drawings, etc, and resultant measurement and weight specifications are only indicative, unless we have explicitly in writing designated these to be binding. The same applies to consumption data. We are entitled to manufacture with tolerances customary in the industry within the framework of what is reasonable for the buyer.

2.3. If the manufacture of prototypes/tool models has been agreed, these will be sent to the buyer prior to fulfillment of the order. The finish of the prototypes/tool models shall be binding for the contract if the buyer fails to object in writing inside of two weeks of receipt. We are entitled to refuse contractual fulfillment until the prototypes/tool models have been accepted as binding. Approved prototypes/tool models are also binding for subsequent orders.

### 3. Documentation/records made available

We reserve all proprietary rights and copyrights to all documents/records made available to buyer in context with placing orders, such as calculations, drawings, etc. Such items may not be made available to third parties without our explicit consent. If we decline to accept buyer's order within the period stated in paragraph 2, these documents/records will immediately be returned to us.

### 4. Prices and terms of payment

4.1 Unless agreed upon differently in writing, our prices are quoted ex works, exclusive of packaging and applicable statutory VAT. The costs for packaging will be invoiced separately.

4.2. The purchase price is due for net payment within 30 days. Interest on arrears will be charged as provided by law. Buyer will automatically come into arrears without any overdue notice being required. The right to assert higher claims to compensation for damages caused by delay is reserved.

4.3 If we have undertaken installation, assembly or any other service and nothing has been agreed to the contrary, the buyer in addition to the agreed remuneration shall assume all necessary ancillary costs such as travel and transport expenses.

4.4. Mould and development costs will be charged separately.

## **5. Offsetting and retention rights**

The buyer is entitled to offsetting only if his counterclaims have been legally established or are undisputed. The orderer is entitled to exercise rights to retention only if his counterclaim is based upon the same contractual relationship.

## **6. Delivery schedules**

6.1. Delivery schedules are principally non-committal and approximate. In case of doubt, the delivery period begins at the time we send the order confirmation.

6.2 The observance of deadlines for deliveries is conditional upon timely receipt of all document/records, necessary permits and approvals to be supplied by the buyer, including plans, and observance of agreed payment terms and other obligations by the buyer. If these conditions are not fulfilled on time, the deadlines shall be extended appropriately; this does not apply if we are responsible for the delay. If we manufacture prototypes/tool models, the delivery term shall begin at the time they are approved.

6.3. If failure to comply with agreed delivery deadlines can be attributed to force majeure, e.g. mobilization, war, riots or similar events such as strikes, lockouts, etc, the deadlines shall be extended appropriately. The same applies if we are not supplied correctly or on time by one of our suppliers.

6.4 If we culpably are in default of delivery, the buyer - if he can prove that he has incurred damages as a result - for each full week of delay may demand compensation of 0.5%, however in total no more 5% of the net price for the share of deliveries which could not be placed in serviceable operation due to the delay.

6.5 Any claims for compensation for damages by the buyer due to delayed delivery and claims for compensation for damages in lieu of performance exceeding the limits specified in section 6.4 are excluded in all cases of delayed delivery after expiry of a delivery deadline set for us. This does not apply where liability is compulsory in cases of intent, gross negligence or due to injury to life, limb or health. The buyer may only withdraw from the contract within the framework of statutory provisions to the extent we are responsible for the delayed delivery.

6.6 At our request, the buyer is obligated to declare within a reasonable period of time if he due to the delay in delivery intends to withdraw from the contract or insists on delivery.

## **7. Passage of Risk**

7.1 Delivery is carried out "ex works", unless we have explicitly agreed differently with the buyer. Unless we have expressly taken over the dispatch or assembly of the delivered object in writing, the risk of accidental loss and accidental deterioration of the goods we supplied therefore passes to the buyer upon handover or collection by the person responsible for transport. The same applies also to partial deliveries.

7.2. Tools are formally accepted at our premises unless agreed upon differently. Buyer's authorized representative will attend such formal acceptance, the results of which will be recorded in an official acceptance log. Acceptance may not be refused due to insignificant flaws.

7.3 In the event of deliveries with installation and assembly, risk passes to the buyer on the date of acceptance at buyer's premises or, if so agreed, following flawless trial operation.

7.4 If dispatch, delivery, start, performance of installation or assembly, acceptance into own operations or trial operations are delayed for reasons attributable to the buyer or buyer falls into default of acceptance for other reasons, risk passes to the buyer at the time default in acceptance occurs.

## **8. Retention of ownership**

8.1 We retain title of ownership to the delivered goods until all payments due under the delivery contract have been made. This applies also to all future deliveries even if we do not consistently and explicitly refer to such right. We are entitled to take back the delivered goods if the buyer acts in breach of contract.

8.2. As long as property rights have not yet passed to buyer, he shall be obligated to keep the goods in proper maintenance and condition. He shall be particularly obligated to adequately insure these at his own cost against theft, fire, and water damages at reinstatement value. Buyer will have any required maintenance and inspections conducted in due time at his own cost. As long as property rights have not yet passed, the buyer will immediately notify us in the event of seizures or other interventions by third parties against the delivered goods. If the third party is unable to reimburse to us the judicial and extra-judicial costs of proceedings pursuant to § 771 ZPO (*Code of Civil Proceedings*), the buyer shall be liable for the losses incurred by us.

8.3 Buyer shall be entitled to resell the delivered goods subject to retention of title in the normal course of business. Buyer here and now assigns to us the receivables from selling the goods subject to retention of title in the amount of the final invoice total (including VAT) of our claim. This assignment is in effect regardless of whether the object of purchase has been resold without or following processing. Buyer shall remain entitled to collect said receivable also after the assignment; this shall not affect our entitlement to collect the account receivable ourselves. However, we engage not to collect the receivable as long as buyer complies with his payment duties from the revenue collected, if he does not fall into arrears of payment and, in particular, if no application for insolvency proceedings has been made and there is no suspension of payments.

8.4 Processing or re-shaping of the object of purchase by buyer shall always be done in our name and on our behalf. In such case, the buyer's entitlement rights to the purchase item shall continue with the transformed item. If the object of purchase is processed with other objects not belonging to us, we shall acquire joint title to the new object in the ratio of the value of the object of purchase (final invoice amount including VAT) to the other processed objects at the time of the processing. This also applies if the object is blended with others. If the blending is such that buyer's object is to be regarded as the main object, it shall be deemed agreed that buyer transfers joint title to us pro rata and that buyer shall safeguard the ensuing sole or joint title on our behalf. To secure our claims against the buyer, he already now also assigns to us such claims against a third party which he incurs from blending the goods subject to retention of title with real-estate property; we hereby accept such assignment

8.5 We engage to release the securities accruing to us upon buyer's request to the extent that the realizable value of our securities exceeds the receivables to be secured by more than 20%.

## **9. Warranty and claims for defects as well as recourse / manufacturer recourse**

9.1 Buyer's claims for defects shall be conditional upon buyer's compliance with his duties of examination and notification pursuant to § 377 HGB (*German Commercial Code*).

9.2 Claims for defects become statute-barred 12 months after delivery to the buyer of the goods we supplied. Goods may be returned to us only with our prior approval. This deadline does not apply where the law pursuant to BGB §438 section 1 no. 2 (buildings and items for buildings), §479 section 1 (right of recourse) and §634a section 1 no. 2 (construction defects) sets out longer deadlines.

9.3 If in spite of all due diligence the goods we supply have a defect which was already incorporated in the part at the passage of risk, we will at our own discretion rework the goods or make replacement delivery, provided claims for defects were asserted in due time. We must always be given an opportunity to make supplementary performance with an appropriate grace period. Rights of recourse shall not in any way be affected by the aforestated regulation.

9.4 If supplementary performance proves a failure, the buyer - regardless of any claims to compensation for damages pursuant to section 9.8 – may withdraw from the contract or reduce remuneration.

9.5 No claims for defects arise in case of merely insignificant deviations from the agreed quality, in case of merely insignificant adverse effects on usability, in case of natural wear and tear or damages arising after passage of risk due to defective or negligent handling, excessive load, unsuitable equipment or as a consequence of particular external influences which are not specified under the contract. If inappropriate modifications or repair work is carried out by the buyer or by third parties, no defect claims shall arise for such or for the consequences thereof.

9.6 Buyer's claims for necessary expenditures related to the purpose of supplementary performance, in particular transport, shipping, labor and material costs, are excluded if expenditures increase because the goods we delivered have subsequently been shipped to a location other than the buyer's business site, unless such shipment complies with its normal use.

9.7 Buyer only has rights of recourse against us if the buyer has not entered into any agreements with its customers beyond statutory defect claims.

9.8 Buyer's claims to compensation for damages for a material defect are excluded. This does not apply to fraudulent concealment of the defect, non-observance of a quality guarantee, injury to life, limb or health or freedom, or to an intentional or grossly negligent breach of obligation by us.

Any further buyer claims or claims other than those set out in these GTC for a material defect are excluded.

## **10. Impossibility, contract adaptation**

10.1 If delivery is impossible, the buyer is entitled to demand compensation for damages unless we are not responsible for the impossibility. However, buyer's claim to compensation is limited to 5% of the value of the share of delivery which cannot be placed in serviceable

operation due to such impossibility. This limitation does not apply if liability is mandatory in cases of intent, gross negligence or due to injury to life, limb or health. Buyer's right to withdraw from the contract is not affected

10.2 If unforeseeable events in compliance with section 6.3 significantly alter the economic significance or the content of the delivery or if they have considerable impact on our operations, the contract shall be amended appropriately in good faith. Where this is not economically feasible, we are entitled to withdraw from the contract. If we wish to exercise this right of withdrawal, we will notify the buyer of such intention immediately after becoming aware of the significance of such event; this applies also if an extension of the delivery time had initially been agreed with the buyer.

## **11. Other claims to compensation for damages, statute of limitation**

11.1 Buyer's claims to compensation for damages on any legal grounds, in particular due to breach of contractual obligations and unlawful acts, are excluded.

11.2 This does not apply if liability is mandatory, e.g. under the Product Liability Act, in cases of intent, gross negligence, due to injury to life, limb or health or due to breach of essential contractual obligations. Any claim to compensation for breach of essential contractual obligations is however limited to foreseeable damage typical of the contract, unless mandatory liability arises for intent or gross negligence or due to injury to life, limb or health.

11.3 If the buyer is entitled to claims to compensation for damages, these shall become statute-barred upon expiry of the applicable statute of limitation under section 9.2. The same applies to the buyer's claims in context with damage prevention measures (e.g. product recalls). The statutory limitation regulations apply to claims to compensation for damages under the Product Liability Act.

## **12. Miscellaneous**

12.1. This contract and the entire legal relationship between the parties is governed by the laws of the Federal Republic of Germany excluding the UN-Convention on Contract for the International Sale of Goods (CISG).

12.2 Our legal domicile shall be place of fulfillment. Insofar as the buyer is a merchant, a legal entity under public law or a special fund under public law, the place where our registered office is situated shall be the exclusive place of jurisdiction for all disputes ensuing from the contractual relationship. We are also entitled to bring legal action at the buyer's legal domicile.

12.3. All understandings and covenants between the parties on fulfillment of this contract have been fixed herein in writing.

12.4. If a clause of these contractual stipulations and any further agreements is or becomes legally ineffective, this shall not affect the validity of the remaining clauses. The contractual parties agree to replace the ineffective clause by an effective clause coming closest in business terms to what the parties had originally intended. This applies analogously also to any legal voids.