

§ 1 Scope

(1) These Terms of Supply shall apply to all transactions

1. with persons acting in the exercise of their commercial or self-employed professional occupation (entrepreneurs) at the time of the conclusion of the contract

2. with public legal entities or with special-purpose entity organized under public law

(2) These General Terms of Sales are designed for agreements to which the special provisions of consumer goods purchase do not apply (Secs. 474 et seqq. BGB (German Civil Code)). The customer shall be obligated to inform us if it cannot be excluded that the products supplied by us are supplied to consumers within the meaning of Sec. 13 BGB (German Civil Code). In this case, we are entitled to rescind from the agreement.

(3) Our below Terms of Sale and Delivery shall exclusively apply to all agreements and offers with us – also in the future – unless deviating individual agreements were made. Other terms and conditions shall not become part of the agreement, even if we did not explicitly object to them. Our employees are not authorized to deviate from the present terms and conditions.

§ 2 Offer – Contract Conclusion

(1) A contract with us is only deemed to be concluded if the purchaser accepts our offer without reservation or receives our written order confirmation, or we begin executing the delivery / performance. If we issue a written order confirmation, this shall be decisive for the content and scope of the contract, unless explicitly agreed otherwise.

(2) The order signed by the purchaser is a binding offer. We are authorized to accept this offer within two weeks by sending an order confirmation or sending the purchaser the ordered goods within this period.

(3) We retain property and intellectual rights over figures, drawings, calculations and other documents. This also applies to those written documents designated as 'confidential'. The purchaser requires our explicit permission before forwarding such items to third parties.

§ 3 Prices – Terms of Payment

(1) Unless otherwise specified in the order confirmation, our prices are 'ex works', excluding packaging; this will be charged for separately.

(2) The statutory value added tax is not included in our prices; should it be due, it shall be itemized separately in the invoice in the statutory amount on the day of invoicing.

(3) The deduction of discounts requires separate written agreement.

(4) Unless otherwise specified in the order confirmation, the purchase price is due for payment net (without deductions) within 10 days of the date of the invoice. The statutory rules of the Federal Republic of Germany apply as regards the consequences of default of payment.

(5) The purchaser shall only be entitled to the right to offset if its counterclaims have been recognized as legitimate in a legal process, are undisputed or are recognized by us. Moreover, the purchaser shall only be authorized to exercise a retention right to the extent that its counterclaim is based on the same contractual relationship.

§ 4 Default of Acceptance

(1) If the purchaser defaults on acceptance or culpably breaches other cooperation obligations, we are authorized to request compensation for consequent damages suffered by us, including any additional costs. The right to make further claims shall remain reserved.

(2) If the conditions outlined in para. (1) exist, the risk of accidental loss or accidental deterioration of the purchase item shall transfer to the purchaser from the time at which the purchaser defaults on acceptance or payment.

§ 5 Deliveries

(1) Periods of delivery and delivery dates will be approximately and subject to confirmation. They shall only be binding if we have confirmed this in writing. The periods of delivery are complied with if we inform within the agreed period that the goods are ready for dispatch.

(2) Changes to the products desired by the purchaser after the order was placed shall interrupt the period of delivery, which shall start again after an understanding has been reached.

(3) The period of delivery shall be extended by the period during which we do not receive our own supplies correctly or in time. The period of delivery or services shall commence only when the purchaser has submitted all required data, drawings, releases, etc. and after all open technical questions have been clarified and all agreed down payments have been made. Furthermore, periods of delivery shall be extended reasonably if the purchaser does not comply with agreed terms and conditions of payment or other contractual provisions. The above shall not apply if we are responsible for the delay.

(4) The period of delivery shall be extended by the occurrence of events that cannot be avoided by us, in particular in case of business interruptions, official interventions, shortage of raw materials, strike, etc. for the period of the interference. If delivery becomes impossible for the same reasons, we shall be released from our obligation to deliver. In this case, we will immediately inform the contractual partner about the impossibility and pay back any remuneration already received.

(5) Even in the event of a delivery time determined by the calendar (Sec. 286 para. 2 no. 1, 2 BGB (German Civil Code)) we will only be in default if we are granted an additional period for fulfillment of two weeks, unless we have previously seriously and finally refused to perform.

We shall only be liable for damages caused by delay or non-compliance up to the amount of the order value, unless we or our vicarious agents acted intentionally or grossly negligent. Any contractual penalty to be paid shall be set off against the claim for damages of the customer.

(6) The customer shall only be entitled to rescind from the contract if we are responsible for the delay and if we have been granted a reasonable additional period that lapsed without result.

(7) We reserve to ourselves the right to carry out an overdelivery or underdelivery of up to 10%. Small deviations in quantities, thicknesses and dimensions may not be a basis for a complaint.

(8) In case of call orders, we shall be entitled to set an additional period of fourteen days for acceptance upon the expiry of three months from the order confirmation and then charge the goods not accepted plus reasonable storage fees at 0.5% of the price for the delayed delivery for every commenced additional week until acceptance, however a maximum of 5% of the delayed delivery in total. The parties of the agreement may provide proof of higher or lower storage fees.

The same shall apply if the dispatch or the delivery of the goods is delayed on request of the customer by more than one month after the notification of the readiness for dispatch.

(9) To the extent to which we confirm any dates of delivery for supplies to foreign countries, we shall only be bound by this under the condition that any factual and technical details can be clarified and any export and import details can be clarified in due time.

(10) Flawless stock from already manufactured production batches must be accepted in all cases. Scrapping at the customer's expense is also possible by agreement.

(11) Upon placing an order, additional machine capacities will be set up for the customer. The schedule until full capacity is available will be agreed with the customer when the order is placed. We assume that we will deliver the offered scope to the customer over the entire term. In the event of premature withdrawal from the project, we reserve the right to invoice any unamortized allocation items.

§ 6 Packaging and transportation risk

(1) The deliveries shall be made EXW Incoterms 2010.

(2) The risk of accidental loss and accidental deterioration shall pass to the customer once the goods have been delivered to the carrier, at the latest when leaving the works. If the dispatch is delayed for reasons for which we are not responsible, the risk shall pass upon notification of the readiness for dispatch.

Clauses such as "delivery free" or similar terms stipulate the cost of transportation, but do not change anything related to the above provision of the transfer of risk.

(3) Unless otherwise agreed, the kind of dispatch shall remain at our discretion, while we are not responsible for the cheapest kind of dispatch.

(4) A transportation insurance cover shall only be taken out upon explicit request and at the expense of the customer.

(5) Our prices are based on the prerequisite that the customer disposes of the transportation packages. If any transportation packages are returned to us, the customer shall bear the cost of the transportation back to us. In this case, the transportation packages have to be clean, free from foreign substances, and sorted according to different packages. Otherwise, we shall be entitled to claim reimbursement for the additional cost for the disposal from the purchaser.

§ 7 Reservation of Title

(1) We shall retain the title to any and all goods supplied by us until all claims – also those incurring in future – against the customer resulting from the business relationship have been paid. If claims are included in current accounts, the reservation of title shall apply to the respective balance. If the customer is in delay with payments, we shall be entitled to take back the goods. The goods will be credited at the real proceed after deduction of the costs for realization and return.

The customer shall be obligated to insure our property against fire, water and theft. The claims against the insurance company are assigned to us. If, upon request, the customer does not prove that a sufficient insurance has been taken out, we shall be entitled to insure the delivery time against theft, breaking, fire, water, and other losses at the expense of the customer.

(2) The purchaser shall notify us promptly about any attachments, seizures or other dispositions, or any third party interventions.

(3) The customer shall be entitled to further process the goods in its ordinary course of business or to retail them by agreeing to an extended reservation of title. The customer shall not be entitled to any other type of disposal.

The customer's rights to process and sell the goods shall expire if the customer fails to comply with payment obligations towards us, grossly infringes the contracts concluded with the customer in any other way or comes into financial collapse. Any stop of payments, over-indebtedness, initiation of insolvency proceedings, and any other serious change of the financial conditions of the customer that could endanger our securities shall be regarded a deterioration of the customer's assets.

(4) Any goods that are subject to the reservation of title will be processed on our behalf. In case of joint processing for several suppliers, we shall be entitled to the co-ownership share in accordance with Secs. 947 et seqq. BGB (German Civil Code).

If the customer combines or merges our goods with a good owned by the customer in such a way that the good of the customer is to be regarded as the main good, the customer already now transfers to us a share of the ownership in the main good at the ratio that the value of our good has compared to the value of the main good. Our co-ownership share shall remain in the possession of the customer who is keeping the good for us.

(5) The customer already now assigns to us a first-priority partial amount of the claims and ancillary rights arising from the resale, the size of the part being in accordance with our participation in the co-ownership. The customer shall not be entitled to agree on a prohibition of assignment.

If a debtor of the customer makes a partial payment to the customer, the claims assigned to us shall be deemed repaid at last.

In the regular course of business, the customer shall be entitled to collect the assigned claims. This authorization shall lapse in the cases described in (7) 3. The customer shall then be obligated to cooperate in collecting the claim.

(6) At the Customer's request, we undertake to release, at our option, the securities to which we are entitled under the above terms, to the extent that the marketable value of such securities exceeds, by more than 20%, the total claim that is to be secured.

(7) To the extent that in case of supplies to foreign countries the law of another country does not allow the reservation of title, but allows us as the seller to retain other rights in the delivery item, we shall be entitled to exercise all rights of this kind. The purchaser shall be obligated to cooperate in such actions.

§ 8 Liability for Defects

(1) If a defect is present in the purchase item, we are authorized to provide supplementary performance in the form of remediation of the defect or delivery of a new, defect-free item, according to our preference. In case of supplementary performance we shall be obligated to bear any expenses for the remediation of defects, in particular transportation, travel, labor, and materials costs insofar as these are not increased by taking the purchase item to another place than the place of performance.

(2) We shall be entitled to refuse the supplementary performance if it would only be possible at unreasonably high costs. This is in particular the case if

- The expenditure associated with the remedying of the defect is expected to exceed 100% of the market value of the purchase item or defective item;

- In case of supplementary delivery, our costs to replace the purchase item exceed 150% of the market value of the delivered items.

The other legal rights of the customer (price reduction, rescission of the contract, compensation for damages, compensation for futile expenses) shall remain unaffected.

(3) If the law does not require otherwise, the customer shall at first be obligated to grant us a reasonable period for supplementary performance in writing before the customer can claim other warranty rights.

Generally, we are to be given a notice period of at least two weeks from the notification of the defect to carry out supplementary performance. The terms are met if we have sent within the deadlines. If a shorter period is agreed in an individual case or a differing reasonable period is necessary, for example in urgent cases where disproportionately high losses are threatening or dangers for the safety at operations occur, then these periods apply.

If the supplementary performance does not take place within this deadline, the customer shall be entitled to claim the legal rights, in particular to rescind from the contract, declare a price reduction or – under the prerequisites of item (12) – claim damages.

It is not required to set an additional deadline if we finally and seriously refused the supplementary performance or if the supplementary performance is not possible.

(4) The rescission from the contract shall be excluded if the delivered item only has insignificant defects. Insignificant defects are in particular only minor deviations from the contractually agreed quality and in case of only minor impairments of the contractually agreed usability of the goods.

(5) The contractual partner may only demand compensation for damages instead of performance if delivery of the defective item constitutes a significant breach of duty. Otherwise, claims for damages shall be governed by Sec. 8.

(6) Compensation for damages for consequential losses incurring independently from the supplementary performance (e.g. loss of production, lost profit, claims based on delayed delivery to the customer's purchasers, etc., Sec. 280 BGB (German Civil Code)) can only be claimed if a reasonable period for the supplementary performance has lapsed without success. We shall then be liable for damages under the prerequisites of item (8).

(7) The warranty period shall be 12 months from the date of delivery or the agreed acceptance of the purchase item. The shortening of the warranty period shall not apply to intent or malice. For executed supplementary performance work or spare parts supplied as part of supplementary performance, the warranty period shall be limited to the date of the expiry of the warranty period for the original supply.

(8) If the period for the supplementary performance expires without success, we shall be entitled to request that the customer inform us of the customer's further warranty claims against us within a period of one month. If the customer does not make such a declaration within this period, any warranty claims shall be excluded. This shall only apply if we expressly instructed about this legal consequence in our request setting the grace period.

(9) The contractual partner shall only be entitled to take recourse against us for defective products to the extent that the customer has not agreed with its own customers on provisions exceeding the domestic legal provisions, in particular warranty liability. The above rules shall apply accordingly to the scope of our warranty liability towards the contractual partner in these cases.

(10) If we have acted based on an error notification or an asserted defect and a review proves that the performance rendered by us has no defect subject to warranty, we can demand reasonable remuneration according to market rates for the efforts and expenses incurred by us.

§ 9 Compensation for Damages

(1) Irrespective of the legal cause, we shall only be liable for compensation for damages

- If we, our legal representatives or vicarious agents have acted with intent or gross negligence;
- If we have given warranties for the fulfillment of such warranties to the agreed extent. Warranties require the written form and must be expressly designated as such;
- In cases of death, bodily injury and health impairment
- In cases of other compulsory legal liability (e.g. German Product Liability Act, German Environmental Liability Act etc.)

(2) In cases of slight negligence – except for the cases of no. 1 – we shall only be liable, irrespective of the legal cause, for a breach of duties which are essential for the contract.

In case of a slightly negligent breach of duties essential for the contract, the amount of our liability for damages is limited as follows: We shall only be liable for the compensation of the typical, foreseeable damages.

Before the contract conclusion, the customer shall be obligated to inform us in writing of special risks, possible untypical damages, and unusual amounts of damages.

The liability for lack of economic success, indirect damages and damages based on third-party claims shall be excluded. The same shall apply to damages from loss of production or lost profits.

(3) If the subject matter of the purchase agreement is defined solely by its type, our liability shall also be exclusively determined based on the above provisions. Any liability not based on fault for compensation for damages shall be excluded.

(4) The above liability provisions shall also apply to legal claims of the customer for reimbursement of futile expenses, and also to the personal liability of our staff, employees, representatives, and vicarious agents.

§ 10 Miscellaneous

(1) If the purchaser is a businessperson, the court of jurisdiction shall be where our registered office is; however we are also authorized to take legal action against the purchaser at the court where its registered office is.

(2) The laws of the Federal Republic of Germany shall apply; the CISG (United Nations Convention on Contracts for the International Sale of Goods) shall not apply.

(3) Unless otherwise specified in the order confirmation, the place of fulfillment shall be our registered office.

(4) We only collect customer data for the purposes of processing contracts. The statutory requirements, in particular the German Data Protection Act [Bundesdatenschutzgesetzes (BDSG)] and the GDPR shall be complied with when processing data. Inventory and user data of the customer shall only be collected, processed or used to the extent this is necessary for the execution of the contractual relationship. We shall not use customer data for advertising, marketing or market research purposes without the customer's consent.

(5) Should individual provisions of the present terms be or become invalid, this shall not affect the validity of the remaining provisions. In that case, the parties shall be obligated to agree instead on a valid provision that comes as close as possible to the intent of the invalid provision.