

§ 1 General – Area of Application

(1) All agreements are exclusively subject to our General Terms and Conditions of Delivery and Payment („Delivery Terms“); we reject any terms and conditions of the customer to the contrary or deviating from our terms and conditions unless we have expressly consented to their validity in writing.

Our Delivery Terms shall apply even if we effect delivery to the customer without reservation with knowledge of terms and conditions of the customer to the contrary or deviating from our Delivery Terms.

(2) All agreements which are made between the customer and us for the purpose of executing this contract shall be set down in writing in this contract. Any Amendments and supplements to the contract shall be made in writing.

(3) Our Delivery Terms shall be applicable vis-à-vis entrepreneurs (§ 14 para. 1 of the German Civil Code [BGB]) and vis-à-vis public entities or public special funds as defined by § 24 of the German Standard Contracts Act (AGBG) and consumers (§ 13 BGB).

(4) Our Delivery Terms shall also apply to all future transactions with the customer within an ongoing business relationship insofar as the customer is an entrepreneur.

§ 2 Offers – Offer Documents – Materialization of Contracts

(1) Details about our delivery program, including price quotations, that are contained in prospectuses, advertisements etc., shall not be binding.

(2) Our offers shall not be binding, unless the confirmation of the order otherwise requires or we have expressly declared otherwise in writing.

(3) Insofar as our offer is binding (see § 2 (2)), the customer shall accept our offer within 10 working days, unless our offer otherwise requires. The time-limit set for acceptance shall be calculated as from the date of our offer.

(4) We shall retain the title to and copyrights in illustrations, drawings, samples, calculations and other documents, also such documents in electronic or other incorporeal form; these may not be made available to third parties.

The customer shall require our express written consent prior to disclosing the same to third parties. This shall apply in particular to such documents termed „confidential“. Any documents belonging to our offers shall be returned to us upon request and in any event if the order is not placed with us.

(5) Orders shall be placed with us in writing. Orders placed with us shall not become binding until we have confirmed these in writing. Any verbal agreements shall only be legally binding if we have confirmed these in writing.

(6) Unless otherwise agreed, the contents of our confirmation of the order shall govern the subject matter of the contract, particularly the scope and time of the delivery.

(7) We reserve the right to carry out technical and engineering changes unless these changes are of a fundamental nature and the contractual purpose is impaired thereby.

(8) If it turns out that the customer has furnished false information about his credit standing in his favor, we shall be entitled, subject to our rights over and above this, to rescind the contract.

§ 3 Prices – Terms of Payment

(1) Unless the confirmation of the order or the contractual relationship otherwise require, our prices for orders placed by entrepreneurs shall apply „ex works“ (Incoterms 2000) and for orders placed by consumers out of factory. Forwarding and packaging costs shall be invoiced separately.

(2) Where goods are shipped, a share of the transportation costs shall be charged for orders to a value of less than 100 Euro in accordance with our prevailing price list. We reserve the right to combine orders to avoid these costs.

(3) All prices shall be net prices exclusive of statutory turnover tax (value-added tax). For orders placed by consumers, our prices shall be gross prices inclusive of value-added tax.

(4) The delivery of items ordered as well as the performance of services commissioned to us is subject to the prior submission of an irrevocable, confirmed letter of credit meeting the requirements of the „ICC Uniform Customs and Practice for Documentary Credits“ of the International Chamber of Commerce in Paris in its respective current form. Exceptions here from are only possible in justified cases and are to be agreed between the parties in writing.

(5) Unless otherwise agreed, we shall be entitled, with regard to orders placed by entrepreneurs having delivery dates of more than 3 months after the order date, to adjust and charge the price resulting from any cost rises having occurred, such as wage costs, material costs, energy costs, transportation costs.

(6) We may charge the customer for the additional costs arising from changes requested by the customer after acceptance of the order even if we consent to such changes.

(7) Insofar as no period has been allowed for payment in our written confirmation of the order or otherwise in writing, the price shall fall due for payment net directly on receipt of the delivered goods or service. In case of orders for work and services, the same shall apply as from acceptance.

(8) If the customer gets in arrears, we shall be entitled to charge default interest of 5 % p.a. above the respective base lending rate of the European Central Bank. We reserve the right to assert further claims for damages.

(9) The customer shall be entitled to make a set-off only if his counter-claims have been recognized by declaratory judgment, are uncontested or have been acknowledged by us. The customer who is an entrepreneur shall be entitled to exercise any right of retention or right to refuse performance only if the same conditions have been satisfied and, furthermore, his counterclaim is based on the same contractual relationship. We shall be entitled to make a set-off without reservation.

(10) Bills and checks shall be accepted, if at all, on account of performance only. Costs of bills and checks shall be for the customer's account.

(11) If we are obliged to perform in advance and circumstances come to our knowledge after the conclusion of the contract which give rise to the supposition that the customer's financial position has substantially deteriorated, we may, at our option, demand either security within a reasonable period of time or contemporaneous payment against delivery. If the customer does not comply with this demand, we shall be entitled, subject to further statutory rights, to rescind the contract. The fact that the customer does not honor bills or checks for reasons for which he is responsible shall particularly give rise to the supposition that the customer's financial position has substantially deteriorated.

§ 4 Time of Delivery

(1) Specified times of delivery shall commence on our acceptance of the order. The commencement of the time of delivery specified by us shall, however, presuppose that all technical questions have been clarified and that the customer has complied with all the obligations incumbent on him. Unless otherwise agreed or unless the contractual relationship otherwise requires, none of the times of delivery specified by us shall be binding.

(2) Delays in delivery caused by force Majeure or unforeseeable circumstances for which we are not responsible, such as interruptions of operations, strikes, lockouts, shortages of means of transportation, difficulties in purchasing raw materials and – insofar as the customer is an entrepreneur – a lack of supplies by our suppliers, shall not result in our default. The agreed time of delivery shall be prolonged by the period of the obstruction. If the obstruction lasts longer than four months, we and the customer shall be entitled at the end of an adequate additional period of time and - insofar as the customer is a consumer – in conjunction with a threat of refusal, to rescind that part of the contract that has not yet been performed. In this case, damage claims shall be excluded.

(3) If the customer grants us a reasonable extension of time in case of our default, expressly declaring that he will refuse to accept the performance after expiry of the stipulated period, and this time limit is not observed, the customer shall be entitled to rescind the contract. The customer shall be entitled to assert damage claims for non-performance to the amount of the foreseeable damage only if the default is due to intent or gross negligence or an infringement of material or cardinal contractual duties.

(4) The limitations of liability pursuant to para. (3) above shall not apply insofar as a transaction for delivery by a fixed date was agreed; the same shall apply if the customer may assert on account of the default for which we are responsible that he is no longer interested in performance of the contract. In these cases, the liability shall be limited to the foreseeable damage typical of the contract.

(5) Meeting our delivery commitments shall presuppose that the customer has performed his obligations punctually and properly.

(6) To the extent that an acceptance (§ 7) must be carried out (e.g. in case of work performances or a written agreement), the date scheduled for the acceptance shall be decisive, alternatively – apart from cases of a legitimate refusal of acceptance – the notice of readiness for acceptance.

(7) If the customer defaults in acceptance or infringes other duties to cooperate, we shall be entitled to demand compensation for the damage suffered by us, including any additional expenses. In this case, the risk of accidental loss or accidental deterioration of the delivery item shall also pass to the customer at that time at which he defaults in acceptance.

(8) If the time of delivery is extended at the customer's request, we may charge the costs resulting there from to the customer's account.

(9) We shall be entitled to effect part deliveries unless this conflicts with a recognizable interest of the customer.

§ 5 Installation and Implementation Services

(1) Unless otherwise agreed in writing, our performance shall not comprise installation, implementation or similar services and our prices shall be exclusive of such services.

(2) Unless otherwise agreed in writing, we shall invoice the customer for installation, implementation and similar services according to time spent in accordance with our price list as may be updated from time to time plus transportation costs and travel expenses.

§ 6 Passing of Risk

(1) Unless the confirmation of the order otherwise requires, delivery „ex works“ (Incoterms 2000) is agreed for entrepreneurs. If the dispatch of the delivery items is postponed beyond the agreed date at the customer's request, the risk shall pass to the customer with the notice of the readiness for dispatch. Insofar as an acceptance must take place, this shall be decisive for the passing of risk. The acceptance shall be carried out immediately after we have given notice of the readiness for acceptance.

(2) We shall be entitled, but not obliged, to take out a transport insurance for the delivery; the costs accruing in this connection shall be for the customer's account.

§ 7 Acceptance

- (1) The customer shall be obliged to accept the object of purchase or work even if immaterial defects which do not significantly impair the use exist.
- (2) In the event that the customer, insofar as he is an entrepreneur, takes delivery of the object of work and does not give notice of any material defects within 10 days after availing himself thereof, the delivery item shall be deemed to be accepted.

§ 8 Warranty for Defects

- (1) A precondition of the warranty rights of the customer who is a businessman – also in case of contracts for work and services – is that he inspects the delivery item and duly gives notice of defects pursuant to §§ 377, 378 of the German Commercial Code (*HGB*). Notices of defects shall be given in writing and specify the defect.
- (2) If the customer is not a businessman, he shall notify us of any defects known to him in writing within two weeks of obtaining knowledge thereof, otherwise his warranty rights shall expire.
- (3) Weights, measurements and technical data contained in drawings, prospectuses, illustrations and other documents shall not be binding and, in particular, shall not constitute any warranted characteristics, unless otherwise expressly agreed in writing.
- (4) If an object of purchase has a defect for which we are responsible, we shall be entitled, at our option, to remedy the defect or to effect a substitute delivery.
- (5) If we are not prepared or not in a position to remedy the defect or to effect a substitute delivery, in particular if this is delayed longer than is reasonable for reasons for which we are responsible, or the remedying of defects/substitute delivery otherwise fails, the customer shall be entitled, at his option, to demand a rescission of the contract or an appropriate reduction in the price.
- (6) Moreover, the customer may assert claims for non-performance pursuant to § 635 BGB (contracts for work and services) only if the work has a substantial defect for which we are responsible and its fitness for use is impaired thereby not just insignificantly, or if the defect is based on an infringement of the recognized rules of technology. In this case too, we shall not be liable for damage that was not caused to the work itself, in particular for lost profit or other pecuniary losses of the customer, subject to the following provisions.
- (7) Unless the provisions laid down below otherwise require, more extensive claims of the customer – on whatever legal grounds – shall be excluded. For this reason, we shall not be liable for damage not caused to the delivery item; in particular, we shall not be liable for lost profit and other pecuniary losses of the customer.
- (8) The above exemption from liability shall not apply to the extent that the damage was caused by intent or through gross negligence or a faulty breach of material contractual duties. It shall further not apply if the customer asserts damage claims owing to the lack of a warranted characteristic. In case of negligence, the liability to pay damages shall be limited to the typical, foreseeable damage.
- (9) The statutory warranty periods shall be applicable. Irrespective thereof, claims based on notices of defects shall, however, be barred by limitation within 6 months. This limitation period shall also apply to claims for compensation of consequential damage caused by a defect unless claims in tort are asserted.

§ 9 Liability on Other Grounds

- (1) To the extent that our liability for damages is excluded or limited pursuant to § 8 para. (6) to para. (9), this shall also apply to all other claims, including claims based on negligence in the course of contracting (*culpa in contrahendo*), infringement of collateral duties, in particular to claims based on producer's liability pursuant to §§ 823 ff. BGB.
- (2) The provision laid down in para. (1) shall not apply to claims pursuant to § 1, 4 of the Product Liability Act (*Produkthaftungsgesetz*) and in case of impossibility or our inability.
- (3) To the extent that our liability is excluded or limited, this shall also apply to the personal liability of our employees, workers, representatives and vicarious agents.
- (4) The limitation of action in respect of claims between us and the customer shall be determined by § 8 para. (9) unless claims based on producer's liability pursuant to §§ 823 ff. BGB are concerned.

§ 10 Reservation of Title

- a) If the customer is an entrepreneur, the following shall apply:
 - (1) We shall reserve title to the delivery item until receipt of all payments based on the business relations with the customer.
- If a current account exists within the scope of the business relations, we shall reserve title to the delivered item until receipt of all payments according to the confirmation of the balance. If a check is delivered, the title shall not be transferred to the customer prior to the final crediting of the amount of the check and, if a bill is delivered, not prior to its payment. In the event that the customer acts in breach of contract, in particular in case of arrears, we shall be entitled to repossess the delivered item. Any repossession of the delivered item on our part shall not constitute any rescission of the contract unless we have expressly declared this in writing. After repossession of the delivered item we shall be

authorized to realize the same. The realization proceeds shall be set off against the customer's liabilities – less appropriate realization costs. However, after the opening of any insolvency proceedings, the rules relating to realization of the German Insolvency Act (*InsO*) shall apply.

- (2) The customer undertakes to handle the delivery item with care as long as the reservation of title exists; in particular, he is obliged to insure this adequately at the reinstatement value against damage caused by fire, water and theft at his expense.

Insofar as maintenance work is necessary, the customer shall perform the same in good time at his expense.

- (3) In case of attachments or other interventions by third parties, the customer shall point out the reservation of title and notify us thereof in writing immediately.

To the extent that the third party is not in a position to reimburse us for the judicial and extra-judicial costs of any action pursuant to §§ 771 German Civil Procedural Code (*ZPO*), the customer shall be liable for the deficit suffered by us.

- (4) The customer is entitled to resell the delivery item in the ordinary course of business. However, he herewith assigns to us all claims to the amount of the invoice total (including value-added tax) of our claims which accrue to him as a result of the resale against his buyers or third parties, irrespective of whether the delivered item was resold without any agreement or by agreement. The customer shall remain authorized to collect these claims even after the assignment.

Our authority to collect the claims ourselves shall not be affected thereby. However, we shall not collect the claim as long as the customer performs his obligations to pay from the collected proceeds, does not get in arrears and, in particular, no application is filed for the opening of insolvency proceedings and there has been no suspension of payments. If this is the case, we may demand that the customer discloses the assigned claims and their debtors, furnishes all the information required to collect the claims, delivers the appurtenant documents and notifies the debtor (third party) of the assignment.

To the extent that a current account exists between the customer and his buyer pursuant to § 355 HGB, the claim assigned to us by the customer in advance shall also pertain to the confirmed balance and, in case of insolvency of the buyer, to the then existing credit balance. However, after the opening of any insolvency proceedings, the rules relating to realization of the German Insolvency Act (*InsO*) shall apply.

- (5) In processing, transforming or combining the delivered item, the customer shall invariably be acting for us. If the delivered item is processed, transformed or combined with other items not belonging to us, we shall acquire joint title to the new item in the same proportion as the value of the delivered item bears to the other processed, transformed or combined items at the time of the processing, transformation or combination. Otherwise, the same shall apply to the item having resulted there from as applies to the delivery items delivered with reservation.

- (6) If the delivered item is mixed with other items not belonging to us to form an integral part, we shall acquire joint title to the new item in the same proportion as the value of the delivered item bears to the other mixed items at the time of the mixing. If the mixing is done in such a manner that the customer's item must be deemed to be the main item it is agreed that the customer will have transferred joint title to us proportionally. The customer shall hold the sole or joint title having thus arisen in safekeeping for us.

- (7) To secure our claims against the customer, he shall also assign to us the claims arising against a third party as a result of his having combined the delivered item with real property.

- (8) We undertake to release the securities due to us at the customer's request to the extent that the value of our securities exceeds the claims to be secured by more than 20 %; selecting the securities to be released shall be incumbent on us.

- b) If the customer is a consumer, he shall not acquire the title to the delivered item until our remuneration has been paid in full.

§ 11 Jurisdiction – Place of Performance

- (1) If the customer is a businessman, the courts of Hamburg shall have jurisdiction. However, we are entitled to file an action against the customer with the court of his place of residence as well.
- (2) Unless otherwise agreed in writing, Hamburg shall be the place of performance in case of contracts with entrepreneurs.

§ 12 Applicable Law, Severability Clause

- (1) The legal relations between the parties shall be exclusively governed by German law to the exclusion of the UN Convention on Contracts for the International Sale of Goods (*UNCITRAL/CISG*).
- (2) Should individual provisions of this contract or of these general terms and conditions be invalid, the validity of the other provisions shall not be affected thereby.