

## **General Terms and Conditions of Delivery and Service**

### **1. Validity of the terms and conditions**

a) All contracts with respect to deliveries and services, which we conclude as of 1 January 2002 with traders, legal entities incorporated under public law or special funds incorporated under public law are subject to the following terms and conditions.

b) In the case of continuing obligations, the contracting party shall be informed about any amendments to the terms and conditions in writing, specifying the amended terms and conditions and shall apply as agreed, if the contracting party proceeds with the continuing obligations, without objecting to this within an adequate time limit.

c) The contract content is based on the written agreements. No further agreements have been made. Contractual changes or amendments shall only be valid if they have been approved by us in writing.

d) General terms and conditions of the contracting party, which deviate from ours or are unfavourable for us, shall also not be considered as contractual content if we fail object to these terms and conditions separately. These GTC shall also apply to future transactions with the customer.

### **2. Offers**

a) Our offers are subject to confirmation. The customer's offers shall be deemed as accepted if we have provided written confirmation or have performed the delivery or service.

b) Cost estimates are non-binding, unless specified otherwise in the order confirmation.

c) Our offers shall not contain any guarantees or the assumption of procurement risks, unless it is expressly specified otherwise.

d) We shall be authorised to grant sub-contracts.

e) Quality of the goods or services

Our details regarding characteristics that are contained in our public statements, such as catalogues, brochures, circulars, advertisements, illustrations, advertising and price lists shall only comprise the quality, insofar as they have become an integral part of the contract. Public statements by a third-party manufacturer or its vicarious agent shall only comprise the quality of the goods, if they are agreed in the contract or we have adopted them expressly and in writing in public statements.

Statements with respect to the quality or durability of a product or service in our contractual declarations, public or non-public statements of a third-party manufacturer or its vicarious agent shall not contain a warranty (assurance) as defined by Section 276 (1) of the German Civil Code (BGB) and no quality or durability warranty as defined by Section 443 of the German Civil Code (BGB) , if we have not expressly adopted such a warranty in writing.

Until the time of delivery, we shall reserve to carry out technical changes that are customary in the trade, particularly improvements, provided that these only cause negligible changes to the quality and the customer is not impaired to an unreasonable extent.

### **3. Purpose of the goods**

Our goods are exclusively intended for use by traders. If the contracting party intends to deliver the goods acquired from use to a consumer or a trader, who, in turn, supplies consumers with such goods, he must inform us of this prior to conclusion of the contract.

### **4. Prices**

a) The prices stated in the order confirmation apply, otherwise, our valid list prices on conclusion of the contract.

b) Unless stated otherwise in the order confirmation, our prices apply in EUR ex place of consignment plus shipping, insurance and packaging costs, as well as the applicable value-added tax at the time of delivery.

c) On arrangement of a delivery period of more than six weeks or with continuing obligations lasting longer than 6 weeks, we shall be authorised to pass on cost increases that have occurred in the meantime for procurement or delivery or personnel (wages and ancillary wage costs) to the contracting party by increasing the relevant prices affected to the necessary extent for compensating these changes.

### **5. Payment**

a) Our claims, particularly our remuneration claims against the contracting party are due immediately, unless agreed otherwise. If a payment deadline has not been agreed upon, the occurrence of default shall be based on the statutory provisions.

b) Payments for workpiece-related models and manufacturing facilities (Clause 8) are always payable in advance without discount.

c) If remuneration is agreed in the case of continual obligations according to payment intervals, the remuneration is then payable at the beginning of each payment interval. In the event of periods of time exceeding 6 months the, contracting party shall be obliged to pay in advance in accordance with the proportional remuneration for the following 6 months respectively.

d) In the case of transfers, whether or not a payment is deemed as being on time depends on the time at which the funds are available to us. The acceptance of cheques and bills of exchange shall only be deemed as payment of the amount after redemption and deducting all expenses. We are not obliged to present bills of exchange and checks punctually.

e) If the contract is a work contract, in which we are the contractor and the customer gives us notice in accordance with § 649 of the German Civil Code (BGB) before we have started to perform services, we are entitled to compensation in a lump sum to the amount of 5 % of the agreed total remuneration. We are entitled to claim a higher, more appropriate compensation.

### **6. Offset and retention rights, assignment, part performance**

a) The contracting party is only authorised to offset with undisputed or legally established claims. The contracting party shall

only be entitled to exercise rights of retention including the law under Section 369 of the German Commercial Code (HGB) with undisputed demands or demands that have been recognised by declaratory judgement from the same legal relationship.

- b) The assignment of claims against us is excluded. Section 354 of the German Commercial Code (HGB) shall remain unaffected by this clause.
- c) Part deliveries and part services and relevant invoices are admissible if they are not unreasonable for the contracting party.

## **7. Endangerment of a claim**

- a) If it becomes identifiable following the conclusion of the contract that our claim to counter-performance is jeopardised by the absence of the contracting party's ability to perform, the contracting party shall be obliged to render advance performance, if our contractual obligations consist of work performance, service or delivery of goods to be procured for the contracting party, which are not always able to be marketed otherwise (saleable).
- b) Furthermore, Section 321 of the German Civil Code [BGB] shall apply, provided that we also can refuse our performance in the event of the endangerment of our claims from the same legal relationship as defined by Section 273 of the German Civil Code.
- c) If payment by instalments is agreed, all outstanding debt claims shall immediately fall due if the contracting party finds himself completely or partly in arrears with at least two consecutive instalments.
- d) Prolongation of payment agreements shall become invalid if the contracting party defaults on a payment or if the preconditions of Section 321 of the German Civil Code (BGB) arise in respect of the claim.

## **8. Workpiece-related models, manufacturing facilities**

- a) If in accordance with the contract, models, drawings, computer programmes, files or manufacturing facilities (facilities) are to be made available by the contracting party, these will be delivered to us free of charge. The contracting party is obliged, on our request, to collect these again. If he does not comply with this request within 3 months, we are authorised to deliver these to him at the expense of the contracting party. The contracting party will bear the costs for maintenance and repair, amendments and replacement. We shall only be obliged to take out insurance upon the request of the contracting party and in return for a full advance on costs.
- b) The contracting party will be responsible for the engineering design, correspondence to the drawings or samples and the suitability of the facilities. We are not obliged to inspect the facilities.
- c) If facilities are produced or furnished by us by order of the contracting party, we shall be entitled to charge agreed or adequate compensation. Facilities that we have delivered shall remain our property. The contracting party shall also not be entitled to a right to recover possessions if he has paid compensation. We reserve the right to dispose of the facilities or otherwise use them, if at least 3 years have passed since the contracting party's last order. Unless otherwise agreed that the contracting party shall be the owner of the facilities, ownership shall pass to him after complete payment of compensation has been made. We are obliged to safeguard the facility; paragraph 1, sub-paragraphs 2 - 5 shall apply. The custody agreement can be terminated and possession requested to be recovered by the contracting party no earlier than 2 years after the transfer of ownership.
- d) It is the contracting party's responsibility to ensure that the service performed by us is not objectionable under public law or civil law, as far as he is involved in their arrangement, particularly providing materials, drawings or other information. The same applies to the possible violation of industrial property rights, in particular patent, utility model, trademark, copyright and design patent rights. Within the scope of his responsibilities, the contracting party is obliged to release us from all third party claims and costs of prosecution or legal defence, which result from the possible violation of rights.
- e) We shall retain the title to the goods and copyrights to all the documents handed over to the customer in particular, illustrations, diagrams and calculations; they shall not be used for other purposes than those laid down in the contract nor made accessible to third parties and must thus be returned to us immediately free of charge, when the contractual purpose of use has been fulfilled or upon the termination of the contract. This shall particularly apply to such documents and other information, which are described as "confidential". We shall be entitled to demand the return of the documents at any time if the maintenance of secrecy has not been ensured.

## **9. Delivery, delivery periods, acceptance default**

- a) Delivery periods and deadlines are in accordance with our order confirmation. If after the conclusion of the contract, amendments to the content or size of delivery are agreed, the delivery period shall be set again for the entire delivery.
- b) The delivery deadline or period has been observed if the goods were dispatched on schedule or the contracting party has been informed that goods are ready for shipment.
- c) An appropriate extension of delivery periods and deadlines occurs if we are unable to deliver due to measures for which we are not responsible, within the scope of industrial disputes, particularly strike and lockout, violence, war or natural disasters, missing or insufficient delivery to us, as well as the occurrence of other unforeseen circumstances. If these circumstances result in more than a temporary delay in the service, we are entitled to withdraw from the contract. If the delay lasts longer than 2 months, the contractor shall be entitled to withdraw from contract with respect to the part of the contract that is not yet fulfilled, if he is not entitled to withdraw from the entire contract under the provisions of these terms and conditions.
- d) If the contracting party does not take delivery of the goods in due time, we shall be entitled, subject to all the further laws, to set an appropriate subsequent deadline, after the expiry of which we shall be entitled to otherwise dispose of the item and to supply the contracting party with an appropriately extended subsequent deadline. We can claim a lump sum fee of 10% of the agreed price not including value-added tax as damages, if the contracting party fails to prove that no loss or only a significantly lower loss has been incurred. We reserve the right to assert a higher actual loss.
- e) Call-off orders shall be accepted within 2 months, unless agreed otherwise.
- f) We are only obliged to insure the goods upon the express written request of the contracting party in its offer, specifying the type of insurance and the insurance sum and in return for the advance payment of the insurance costs.

## **10. Transfer of risk**

- a) The risk transfers to the contracting party at no later than the time of dispatch of the goods, even if we have taken responsibility for further services, such as transport, or bear the transport costs.

**b)** If dispatch is delayed due to reasons for which the contracting party is responsible, the risk then transfers to the contracting party when the goods are ready for dispatch. We are, however, obliged to produce the insurance at the contracting party's expense, which the contracting party requests, provided that the contracting partner reimburses the costs in advance.

## **11. Reservation of title**

**a)** The title to the goods delivered shall only be transferred to the contracting party upon the complete payment of all our existing claims and those claims that arise following the conclusion of the contract from the business relationship.

**b)** The following regulations apply until the reservation of title expires:

The contracting party is obliged to carefully handle and insure the delivered goods. He is entitled to resell these within the context of his ordinary business operation as long as he is not in default. The contracting party is also entitled to work and process the goods on our behalf as the manufacturer but without us incurring and resulting obligations. If our (joint) ownership expires due to union, the (joint) ownership of the contracting party to the single item shall be transferred to us in accordance with the value of the goods, which the contracting party shall retain in safekeeping on our behalf, at no charge to us.

The contracting party will assign to us, by way of collateral security, the claims made to him resulting from the resale or due to other legal reasons. We will accept this assignment. The reselling of delivered goods is excluded if the claims resulting from the resale or other legal reasons are not transferable.

The contracting party is authorised to collect claims resulting from the resale or other legal reasons as long as he fulfils his obligations towards us and the conditions in article 7 (claim risk) of these general terms and conditions or under Section 321 of the German Civil Code (BGB) do not occur. The contracting party is obliged to pay over the sums collected to us, if the secured claims are due for payment.

The contracting party is obliged, at our request, to disclose the assignment and to recover the documents and information necessary for the assertion of the claim to us. In the case of third party access to the conditional goods or claims assigned in advance the contracting party is obliged to refer to our property and to inform us immediately by handing over the documents necessary for intervention.

In the case of behaviour on the part of the contracting party in violation of the contract, particularly payment default or breach of the duties imposed on the contracting party by this clause, specifically, his duties of care in respect of the goods and the duty to pay the collected amounts, we are justified in requesting the surrendering of the delivered goods or assignment of the contracting party's existing rights to recover possession vis-à-vis the third-party. The assertion of the reservation of title or the pledging of the delivered goods shall not constitute withdrawal from the contract.

If the assessed value of the assigned claims by way of collateral security, according to the attainable revenue, exceeds the amount of the secured claims by more than 20 %, we shall be obliged to reassign these at the request of the contracting party.

## **12. Claims for damages, reimbursement of futile expenses**

**a)** Restriction of liability based on its merits

The contracting party shall only be entitled to claims for damages for the reimbursement of futile expenses due to violations of obligations or if the due performance is not rendered or not rendered as due by us, due to default or in the event of defects for:

**aa)** claims resulting from the injury to life, limb or health, which are particularly due to our at least negligent violation of a duty or an intentional or negligent violation of a duty of one of our statutory representatives or vicarious agents,

**bb)** other claims, which are based on an at least grossly negligent violation of an obligation on our part or on an at least grossly negligent violation of an obligation of one of our statutory representatives, executives or vicarious agents or the at least negligent violation of essential contractual obligations (cardinal obligations) on our part or an at least negligent violation of an obligation of one of our statutory representatives, executives or vicarious agents and

**cc)** claims, which fall within the scope of protection of an assurance issued by us (guarantee, Section 276 (1) of the German Civil Code (BGB)) or a quality or durability guarantee (Section 443 of the German Civil Code (BGB)).

**b)** Restriction of liability based on the amount

If our liability for simple negligence and our liability for the grossly negligent behaviour of our vicarious agents, who are not statutory representatives or executives, is not excluded in accordance with letter a), then we are only liable for the claims that can be typically anticipated upon the conclusion of the contract and only up to the amount of the interest in the performance of the contract for the compensation of futile expenses.

**c)** Liability from pre-contractual obligations

The foregoing paragraphs also apply to claims for damages of the contracting party from obligations, which arise due to the initiation of contractual negotiations, the preparation of a contract or similar business contacts. If a contract is concluded between ourselves and the contracting party, the claims for damages of the contracting party are deemed as waived, which were not justified in accordance with the aforementioned regulations in the case of the existing contract.

**d)** Claims from transferred rights

The aforementioned regulations shall also apply for claims, which the contractual partner asserts from transferred rights. The contracting party can only invoke foreign law if the claim is also justified when applying the aforementioned regulations and these general terms and conditions of the contract.

### 13. Claims of the contracting party in the event of defects

#### a) Obligation to investigate and give notice of a defect in the event of material faults

Within the scope of non-remunerated sales, work, work performance, service or business management contracts, the contracting party must immediately examine the delivered goods or services after delivery and if material defects are noticed, must report this to us immediately. If the contracting party refrains from reporting the defect(s), the goods or services are deemed as approved, unless the defect was not recognised at the examination. If such a defect should later appear, it must be reported immediately after the discovery; in all other cases, the goods or services are deemed as approved in view of the material defect. The sending of the notification on time is sufficient to maintain the rights of the contracting party. If we have fraudulently concealed the defect, we cannot enforce this paragraph.

#### b) Material defects on used items

The rights of the contracting party due to material defects are excluded when it purchases used items. This does not apply to claims for damages and claims resulting from an assurance issued by us (guarantee, Section 276 paragraph 1 of the German Civil Code (BGB)) or a quality or durability guarantee (Section 443 of the German Civil Code (BGB)).

#### c) Supplemental performance

We shall be entitled to rectify the defect at our option, by means of subsequent improvement or the delivery of a faultless item (supplemental performance). If the supplemental performance fails, the contracting party can request the reduction of the purchase price or make amendments to the contract or withdraw from the contract, at his option, provided that a building service is not the object of the liability for defects. The contracting party's right to damages shall remain unaffected by this clause.

#### d) Expiration of claims due to defects

The statutory limitation period applies:

**aa)** for claims for damages due to defects,

**bb)** for recourse claims in the event of withdrawal or reduction of the purchase price in the event of consumer goods purchase agreements (Section 478 of the German Civil Code (BGB)),

**cc)** for claims due to a tortious act and

**dd)** in the cases of Section 438 paragraph 1 item no. 2 and 634a paragraph 1 item no 2 of the Civil Code (BGB).

All remaining claims of the contracting party due to material defects of newly manufactured items or work performance, particularly to supplemental performance, withdrawal, reduction and compensation of futile expenditure, shall expire within one year.

The same shall apply to claims due to defects of title with the following exception: Claims due to a defect that consist of a real right of a third party, on the basis of which the return of the purchased item can be demanded, or of another right, which is entered in the land register, expire within 5 years.

### 14. Place of performance

For contracts with traders, the place of performance for both parties is our company's head office

### 15. Protection of business secrecy

**a)** All documents, data and information made available to us by the contracting party are not confidential, where the contracting party has not indicated that these are confidential. If we use a third party to perform a delivery or service, we can pass on the customer data in any event, if necessary for the attainment of the contractual objective.

**b)** Documents, data and information made available to the customer by us are to be kept secret, particularly information, which makes the use of our services possible or easier. Drawings and documents shown to the contracting party remain our property and are to be released on request. At our request, the persons who have access to this information are to be mutually agreed upon.

### 16. Applicable law, contract language, place of jurisdiction, partial nullity, limitation

**a)** These general terms and conditions and all legal relationships between the parties are governed by German substantive law. The validity of the United Nations Convention concerning contracts for the international sale of goods is excluded.

**b)** The language of the contract is German.

**c)** If the contracting party is a trader, a legal entity incorporated under public law or a special fund incorporated under public law, the exclusive place of jurisdiction for all disputes resulting from the contractual relationship is our company's head office. However, we are entitled to take the contracting party to court at another legal place of jurisdiction.

It is agreed that regarding all other contracting parties, the place of jurisdiction will be our head office for all disputes resulting from the contractual relationship in the case where the party filing for legal action after the conclusion of the contract, no longer has Germany as his place of residence or if his usual place of abode is not known at the time of the commencement of the proceedings.

**d)** A suspension of the statute of limitations of claims of the contracting party in the case of negotiations only occurs if we have consented to negotiations in writing. The suspension ends 3 months following our last written statement.

**e)** The invalidity of provisions in these contractual terms and conditions or another stipulation arranged between the parties shall have no influence on the validity of the remaining provisions of these general terms and conditions of delivery and service. In the case of other stipulations arranged between the parties, they are obliged to replace the invalid provisions with valid provisions which most closely correspond to the sense of the invalid provisions.