

# General Terms and Conditions of Sale and Delivery

## Section 1 General – Scope of application

(1) Our General Terms and Conditions of Sale and Delivery (GTC) shall apply exclusively, but only vis-à-vis companies within the meaning of Section 310 subsection (1) of the German Civil Code (BGB); we do not recognise any conflicting terms and conditions of Customer or those deviating from our GTC unless we have explicitly consented to their applicability in writing. Our GTC shall also apply if we effect delivery to Customer without any reservations in the knowledge of conflicting terms and conditions of Customer deviating from our GTC. Our GTC shall also apply to all future business relationships even if said terms and conditions are not explicitly agreed upon once more.

(2) All agreements entered into between us and Customer for the purpose of the performance of this Agreement are recorded in writing in this Agreement.

## Section 2 Offer – Documents pertaining to an offer

(1) If the order is to be qualified as an offer pursuant to Section 145 BGB, we may accept the offer within a period of 2 weeks.

(2) We reserve rights of ownership and copyright with regard to illustrations, drawings, calculations and other documents. This also applies to any written documents marked as “confidential”. Customer shall require our explicit written consent prior to their being passed on to third parties.

(3) Drawings, illustrations, measurements, weights and any other performance data shall only be binding if this is explicitly specified in writing.

## Section 3 Prices – Terms of payment

(1) Except as otherwise stated in the order confirmation, our prices shall apply „ex works“ Bentwisch, excluding packaging; packaging will be billed for separately.

(2) Our prices do not include statutory value-added tax; it is shown in the statutory amount separately on the invoice on the day when the invoice is rendered.

(3) Except as otherwise stated in the order confirmation, the net purchase price (without deductions) shall be due for payment within 14 days from the invoice date.

(4) Customer shall only be entitled to set-off if their counter-claims have been determined to be final and conclusive, are uncontested or recognised by us. Moreover, Customer shall only be authorised to exercise a right of retention insofar as their counter-claim is based on the same contractual relationship.

## Section 4 – Delivery period

(1) Agreements on delivery dates or delivery periods shall be subject to the written form. The commencement of the delivery date or period indicated by us or agreed upon shall require the prior clarification of all technical issues and questions.

(2) Moreover, the observation of our obligation to deliver requires that Customer meets their obligation in a timely and due and proper manner. We reserve the right to issue a plea of non-performance.

(3) In the event of a default in taking delivery on the part of Customer or if Customer culpably breaches duties to cooperate, we shall be entitled to demand the reimbursement of any losses incurred by us as a result thereof, including any additional expenses. We reserve the right to assert further claims or rights.

(4) We shall be liable in accordance with statutory provisions insofar as the delay in delivery is based on a wilful or grossly negligent breach of contract for which we are responsible. Any guilt or fault of our representatives or vicarious agents shall be attributable to us. Where the delay in delivery is based on a grossly negligent breach of contract for which we are responsible, our liability for compensation for damages shall be limited to the occurrence of foreseeable damages of a typical nature.

(5) We shall also be liable in accordance with statutory provisions if the delay in delivery for which we are responsible is due to the culpable breach of a material contractual duty; in this case, however, compensation for damages shall be limited to the occurrence of foreseeable damages of a typical nature.

(6) Further statutory claims and rights of Customer are reserved.

## Section 5 Passing of risk – Packaging costs

The risk shall pass to Customer as soon as the consignment has been handed over to the person carrying out the transport or has left our warehouse for shipment. Should shipment become impossible through no fault of our own, the risk shall pass to Customer when notification is furnished that the goods are ready for dispatch.

## Section 6 – Liability for defects

(1) Warranty claims of Customer shall be contingent upon their having duly met their obligations to inspect and give notice of defects pursuant to Section 377 of the German Commercial Code (HGB).

(2) In the event of the existence of a defect in the purchased item, Customer may opt to demand subsequent performance in the form of a remedy of the defect or delivery of a new, faultless item. In the case of a remedy of a defect or a replacement consignment, we shall be obligated to assume all necessary expenses for the purpose of subsequent performance, in particular costs for transport, labour and materials, insofar as these costs are not increased by the purchased item having been transported to a place other than the place of performance.

(3) Should subsequent performance prove to be unsuccessful, Customer shall, at their own discretion, be entitled to rescind the contract or demand a reduction in price.

(4) We shall assume liability in accordance with statutory provisions if Customer asserts claims for compensation based on intent or gross negligence, including intent or gross negligence of our representatives or vicarious agents. Insofar as we are not accused of having committed any wilful breach of contract, compensation for damages shall be limited to the occurrence of foreseeable damages of a typical nature.

(5) We shall be liable in accordance with statutory provisions insofar as we culpably breach a material contractual duty; in this case, too, however, compensation for damages shall be limited to the occurrence of foreseeable damages of a typical nature.

(6) Should Customer be entitled to a claim for compensation instead of performance, our liability, also within the scope of subsection (3), is limited to the occurrence of foreseeable damages of a typical nature.

(7) Liability for the culpable injury to life, limb or health shall remain unaffected; this also applies to compulsory liability under the German Product Liability Act (Produkthaftungsgesetz).

(8) Unless otherwise stipulated above, liability shall be excluded.

(9) The statutory period of limitation for warranty claims is 12 months, calculated from the date of the passing of risk.

(10) The statutory period of limitation in the case of recourse against the supplier as provided for under Section 478 and Section 479 BGB shall remain unaffected; it is five years, calculated from the date of the delivery of the faulty item.

## Section 7 – Joint and several liability

(1) Compensation for damages going beyond that provided for under Section 6 is excluded – regardless of the legal nature of the asserted claim. This applies, in particular, to compensation claims due to fault when the contract was concluded, due to other breaches of duty or tortious claims for compensation for damage to property under Section 823 BGB.

(2) The limitation in accordance with subsection (1) shall also apply insofar as Customer demands reimbursement of useless expenditure rather than performance of service, in place of a claim for compensation.

(3) Insofar as our liability for compensation is excluded or limited, this shall also apply in view of the personal liability for compensation of our salaried employees, our salaried employees or wage earners and members of staff, representatives and vicarious agents.

## Section 8 – Safeguarding of the reservation of ownership

(1) We reserve the right of ownership of the delivery item until receipt of all payments from the delivery agreement. Should Customer act in breach of contract, in particular in the case of a default in payment, we shall be entitled to take back the delivery item. Our taking back the delivery item constitutes a rescission of contract. After taking back the delivery item we are authorised to utilise said item, the proceeds from the utilisation are to be credited against Customer's obligations – with the deduction of reasonable and proportionate utilisation costs.

(2) Customer is obligated to treat the delivery item with care; in particular, they are obligated to adequately insure said item at their own expense against damage from fire, water and theft at the new value. Should maintenance and service work be necessary, Customer shall carry out such work in a timely manner at their own expense.

(3) Customer shall notify us in writing without delay in the case of a levy of execution or any other interference by third parties to enable us to file action pursuant to Section 771 of the German Code of Civil Procedure (ZPO). Should the third party not be in a position to reimburse us for in-court and out-of-court expenses of a lawsuit pursuant to Section 771 ZPO, Customer shall be liable for the losses incurred by us.

(4) Customer is entitled to resell the purchased item in the ordinary course of business; they shall, however, already assign all claims to us in the amount of the final invoice amount of our claim (including VAT), which they acquire vis-à-vis their customer or third party from the resale, regardless of whether the purchased item was sold without or after processing. Customer shall remain entitled to recover this account receivable even after the assignment. Our authorisation to recover the account receivable ourselves shall remain unaffected hereby. We undertake, however, not to recover the account receivable as long as Customer meets their financial obligations from the proceeds taken, does not get into arrears and, in particular, no application has been filed for the opening of conciliation or insolvency proceedings or payments have not been discontinued. Should this be the case, however, we may request Customer to notify us with regard to the assigned accounts receivable and the debtor(s) thereof, to disclose all information required for the recovery, to surrender the documents pertaining thereto and to inform the debtors (third parties) of the assignment.

(5) The processing or transformation of the purchased item by Customer is always carried out for us. If the purchased item is processed together with other objects not belonging to us, we shall acquire co-ownership of the new object in the ratio of the value of the purchased item (final invoice amount, including VAT) to the other processed objects at the time of their processing. In all other cases, the same shall apply to the object arising from the processing as to the purchased item delivered with reservation.

(6) If the purchased item is inseparably mixed with other objects not belonging to us, we shall acquire co-ownership of the new object in the ratio of the purchased item (final invoice amount, including VAT) to the other mixed objects at the time when they are mixed. Should the mixing be carried out in such a manner so that the object of Customer is to be regarded as the principle object, it is deemed agreed that Customer will assign co-ownership to us on a pro-rata basis. Customer shall keep the sole ownership or co-ownership in safe custody for us.

(7) Customer shall also assign to us the accounts receivable arising vis-à-vis a third party from joining and/or combining the purchased item with a real property unit in order to secure our claims against them.

(8) Upon request by Customer, we undertake to release the securities to which we are entitled to the extent that the market value of our securities exceeds the claims to be secured by more than 10 %, the choice of the securities to be released shall be at our discretion.

## Section 9 – Place of jurisdiction – Place of performance

(1) If Customer is a merchant, the place of jurisdiction shall be our corporate domicile, we are, however, also entitled to bring action against Customer at the court at their place of residence.

(2) These GTC are subject to the laws of the Federal Republic of Germany; the application of the United Nations Convention on the International Sales of Goods (CISG) is excluded.

(3) Except as otherwise indicated in our confirmation of order, our corporate domicile shall be the place of performance.