

## **General Terms and Conditions of Sale and Delivery** **(Status 10/18)**

### **1. Validity**

**1.1** Our Terms and Conditions of Sale shall apply to all business relations with customers to the extent that the customer is an entrepreneur within the meaning of § 14 German Civil Code (German Civil Code), a legal entity under public law or a special fund under public law.

**1.2** Our deliveries, services, offers, order confirmations and commercial letters of confirmation are made exclusively on the basis of these terms and conditions. This shall also apply to all future business transactions with the customer, even if we do not separately refer to their validity. General terms and conditions of the customer are not valid.

### **2. Offers**

We are entitled to revoke our offers without providing reasons until receipt of the declaration of acceptance (offer subject to confirmation).

### **3. Prices**

Unless otherwise agreed, our prices include freight and packaging costs, plus VAT, and are subject to change without notice.

### **4. Payment, Default of Payment**

**4.1** The invoice can be sent either electronically or on paper.

**4.2** Unless otherwise agreed our invoices shall be payable in full within a maximum of 30 days of the invoice date, provided that the customer has received the goods and the invoice within 10 days of the day following the invoice date.

**4.3** The customer is not entitled to withhold payment or to offset counterclaims when these do not result from the same contractual relationship and are caused by defects. In all other respects, set-off shall only be permissible with counterclaims which have been legally established, acknowledged or are undisputed.

**4.4** In the event of a plea of uncertainty (§ 321 Par. 1 German Civil Code) or in the event of default in payment by the customer totalling more than EUR 2000.00, we shall be entitled to revoke all payment terms granted, demand immediate payment of all claims and withhold deliveries.

**4.5** Insofar as we grant payment discounts, this shall be subject to compliance with our terms of payment. We are entitled to offset payment discounts against claims from future deliveries.

**4.6** In the event of default in payment, we are entitled to charge 1% interest on arrears per full month, as well as a lump sum for dunning costs of € 40.00. The parties reserve the right to prove a higher or lower damage caused by default.

## **5. Delivery time, force majeure, delay in delivery**

**5.1** Only agreed delivery periods are binding.

**5.2** In cases of force majeure, the agreed delivery periods shall be reasonably extended and claims for damages shall be excluded. Force majeure is an external event, caused by elementary forces of nature or by the actions of third parties that are unforeseeable according to human insight and experience, cannot be prevented or rendered harmless with economically tolerable means, even by taking the utmost care reasonably expected according to the circumstances, and it is also not to be taken into account owing to its frequency. This also includes operational disruptions through no fault of our own, such as strikes, lock-outs and delays in delivery. When the force majeure lasts longer than eight weeks, both parties are entitled to withdraw from the contract without being liable for damages.

**5.3** When we are in default, our liability shall be limited to 0.5 % of the net price for each completed week of default, but not more than a total of 5 % of the net price for the affected part of the delivery, provided that the customer proves the existence of damage. This limitation of liability shall not apply in cases of intent or gross negligence.

**5.4** The purchaser is obliged to declare, within a reasonable period of time and at our request, whether he will withdraw from the contract as a result of the delay in delivery or insist on delivery.

## **6. Partial delivery, return of goods, default of acceptance, transfer of risk**

**6.1** Partial deliveries are permissible, as long as they are not unreasonable for the customer.

**6.2** Unless it is a warranty case, each case of redemption of goods shall take place as a debt that is to be paid on delivery. When goods are taken back as a gesture of goodwill, we shall charge a flat rate of 10% of the net invoice value for the costs of taking back and selling the goods.

**6.3** In the event of default in acceptance, we shall be entitled to charge the customer storage fees amounting to 0.5% of the gross price for each month commenced, but not more than a total of 5% of the gross price. The parties reserve the right to prove higher or lower storage costs. The same shall apply if the collection or dispatch of the goods is delayed at the customer's request. We reserve the right to assert other additional expenses in addition to the storage fee.

**6.4** The transfer of risk takes place when the delivery is handed over to the forwarding agent. Delivery and transfer of risk shall always take place ex works Freiburg, whereby the choice of the forwarding agent, including means of transport and transport routes shall be left to us while safeguarding the customer's legitimate interests.

## **7. Blanket purchase order**

Unless otherwise agreed, on-call orders are to be accepted at the latest within 6 months of expiry of the contractual period, and this is to ensue without this requiring a request for acceptance on our part. Once this period has expired, we shall be entitled, at any time and at our discretion, to either invoice the goods or cancel the order.

## **8. Warranty**

**8.1** In the presence of only insignificant defects, the customer is not entitled to any claims for damages and no right of rescission.

**8.2** The customer must inspect the delivered goods immediately and submit a notification of complaint regarding any recognisable defects or shortfalls in quality immediately, but at the latest within five days of delivery. Notification must also be made regarding defects that are not recognisable immediately after discovery, but shall then ensue no later than five days after discovery. The periods for giving notice of defects shall apply in the same way for direct deliveries to third parties named by the customer; the customer shall also ensure that notice of defects is submitted in due time in such cases. Insofar as customers of the purchaser give notice of defects to the purchaser, the purchaser shall forward such notice of defects to us without delay. If the customer detects defects in the goods, he shall undertake not to resell them until agreement has been reached on the handling of the warranty case, or judicial or extrajudicial preservation of evidence has taken place. The customer is obliged to make the goods complained about available to us for the purpose of checking whether a warranty case exists. When he refuses this culpably, warranty claims are void.

**8.3** If his customer asserts warranty rights, the customer shall set us a reasonable deadline for subsequent performance deviating from § 445 a par. 2 German Civil Code, before asserting the other rights as specified in § 437 German Civil Code, instead of subsequent performance, (right of second tender). In the cases in which we are entitled to the right of second tender, we shall be entitled and obliged, at our discretion, to remedy the defect free of charge within a reasonable period up to three times, or to deliver a new delivery (subsequent performance), provided that the defect occurs within the limitation period and is notified immediately after it has become apparent, provided that the cause of the defect already existed at the time of the transfer of risk. The customer is obliged to provide evidence for this. When the supplementary performance fails, the Purchaser may withdraw from the contract or reduce the remuneration without prejudice to any claims for damages pursuant to Section 9.

**8.4** Warranty claims are subject to a limitation period of one year. This shall not apply if the law pursuant to § 438 par. 3 German Civil Code (fraudulent concealment) and § 445 b par. 1 German Civil Code (right of recourse) prescribes longer periods. The statutory provisions on suspension of expiration, suspension and recommencement of the periods shall remain unaffected.

**8.5** Claims for damages due to defects shall be governed by Section 9. In addition to the claims regulated in Section 8 in conjunction with Section 9, the Purchaser shall not be entitled to any warranty claims. The customer shall not be entitled to any warranty claims beyond the claims regulated in Section 9.

**8.6** If a notice of defect by the customer is culpably unjustified, we are entitled to demand compensation from him for our expenses incurred and other damages.

## **9. Damages**

**9.1** Claims for damages on the part of the customer, irrespective of the legal basis, in particular due to the breach of duties arising from the contractual obligation and from tort, are excluded.

**9.2** The exclusion of liability in accordance with Section 9.1 shall not apply to the extent that we are legally bound to be liable, in particular

- for own intentional or grossly negligent breach of duty and intentional or grossly negligent breach of duty by legal representatives or vicarious agents,

- for the violation of essential contractual obligations, whereby contractual obligations are essential when their fulfilment is made possible by the proper execution of the contract in the first place and when the customer can regularly rely on their compliance,
- if, in the event of a breach of other obligations within the meaning of § 241 par. 2 German Civil Code (obligations of consideration), the customer can no longer be reasonably expected to accept our performance,
- in case of injury to life, body or health, also by legal representatives or vicarious agents,
- according to the product liability law or according to any other mandatory legal liability facts.

In the event of liability arising from slightly negligent breach of material contractual obligations as well as initial impossibility for which we are responsible, and in the event of mandatory liability for defects in title, we shall only be liable for the average damage typical of the contract and the damage foreseeable in the event of only slight negligence.

Our liability is - with the exception of injury to life, limb or health as well as other mandatory statutory liability provisions - limited in total to the scope of cover of our business liability insurance, provided that cover is provided to the extent customary in the industry.

**9.3** The above exclusions or limitations of liability shall apply to the same extent in favour of executive and non-executive employees as well as in the case of liability for our vicarious agents.

**9.4** Claims for damages by the customer may only be asserted within a preclusive period of one year from the beginning of the statutory limitation period. Claims for damages due to material defects (Section 8) shall become statute-barred in accordance with Section 8.4, unless we are liable.

The above limitation period and the shortening of the limitation period shall not apply if we are liable due to gross negligence or due to injury to life, limb or health, in accordance with the Product Liability Act or in accordance with other mandatory statutory provisions on liability.

**9.5** A change in the burden of proof to the disadvantage of the customer is not associated with the provisions in this Section 9.

## **10. Retention of title**

**10.1** The delivered goods remain our property until all our claims arising from the business relationship with the customer have been satisfied. The customer is authorised to sell the goods in the ordinary course of business, but not to pledge them or assign them by way of security. In the event of deterioration in the customer's financial circumstances, we shall be entitled to prohibit the sale of the unpaid goods.

**10.2** The sale is only permitted under the condition that the customer (reseller) makes the reservation that ownership is only transferred to his customer when he has completely fulfilled his payment obligations in respect of the reserved goods. The customer hereby assigns to us all claims arising from the resale up to the amount of our claim.

**10.3** The purchaser is authorised to collect assigned claims. The authorisation to collect shall lapse in the event of default in payment or a significant deterioration in the financial circumstances of the customer. In these cases, we are entitled to inform the customer of the assignment and to collect the claims ourselves.

To assert the assigned claims, the purchaser must provide the necessary information and allow this information to be verified. In particular, upon request, he must provide us with a precise list of those claims arising to him, with the names and addresses of the buyers, the amount of the individual claims, invoice date etc. and allow access to his business premises for inspection.

**10.4** In the event of his suspension of payments or a significant deterioration in his financial circumstances and with seizures, the customer undertakes to notify us immediately. Attachment creditors are to be named by stating their address. The customer shall bear all costs that must be incurred for the cancellation of seizure by attachment creditors and for the replacement of the goods.

**10.5** In the event that the customer is in default of payment with a considerable partial amount, suspends payments or when a significant deterioration of his financial circumstances occurs, in particular if the opening of insolvency proceedings against his assets is applied for, we shall be entitled to demand the return of the reserved goods. The demand for surrender shall constitute a withdrawal from the contract. In such cases, it shall not be necessary to set a performance deadline. We also reserve the right to claim damages in the event of withdrawal from the contract.

**10.6** The customer shall store the reserved goods for us free of charge; he shall not be entitled to establish a warehousing lien. He undertakes to insure the goods to a reasonable extent against customary risks such as fire, vandalism, theft, water and damage in transit. He hereby assigns to us his claims for compensation to which he is entitled from damages of the aforementioned kind against third parties in the amount of the invoice value of the goods.

## **11. Place of jurisdiction, applicable law**

**11.1** The place of jurisdiction for all disputes arising from the contractual relationship is Freiburg im Breisgau. However, we reserve the right to assert our rights in court at the customer's place of business instead.

**11.2** These terms and conditions as well as all contractual relationships concerning deliveries and services by us are subject to German substantive and German procedural law. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.