

General Terms and Conditions

§ 1 General, Scope of Application

(1) The present General Terms and Conditions shall apply to all our business relationships with our customers ("buyers"). The General Terms and Conditions shall only apply if the buyer is an entrepreneur (§ 14 BGB=German Civil Code), a legal person under public law or a special fund under public law.

(2) The General Terms and Conditions shall apply in particular to contracts regarding the sale and/or delivery of movable items ("goods"), irrespective of whether we produce the goods ourselves or purchase them from subcontractors (§§ 433, 651 German Civil Code). Unless otherwise agreed the General Terms and Conditions shall apply in the version most recently communicated at the time of the buyer's order and/or in the version most recently communicated in text form as framework agreement also for similar future contracts without having to refer to them again in each individual case.

(3) Our General Terms and Conditions shall apply exclusively. Differing, conflicting or supplementary general terms and conditions of the buyer shall only and insofar become an integral part of the contract if we explicitly agreed to their validity. This approval requirement shall apply in any case, for example even if we deliver to the buyer without any reservation although we know the general terms and conditions of the buyer.

(4) Individual agreements made with the buyer (including supplements, additions and modifications) shall in any case take preference over these General Terms and Conditions. As regards the contents of such agreements, a written contract and/or our written confirmation is decisive, subject to the proof to the contrary.

(5) Legally binding declarations and notifications which the buyer has to make to us (e.g. fixing deadlines, notices of defects, declaration of withdrawal or reduction) have to be in written form to take effect.

(6) Any references to the application of statutory provisions are for clarification purposes only. Even without such a clarification, the statutory provisions shall apply unless they have not been directly modified or expressly excluded in these General Terms and Conditions.

§ 2 Contract Conclusion

(1) Our offers shall be subject to change and not binding. This shall also apply in case we provided catalogues, technical documentations (e.g. drawings, plans, calculations, references to DIN standards), other product descriptions or documents to the buyer – also in electronic form - in which we reserve proprietary and intellectual property rights.

(2) The order of goods by the buyer shall constitute a binding contractual proposal. Unless otherwise stated in the order, we shall be entitled to accept this contract offer within 2 to 4 weeks after receipt in our house.

(3) The acceptance can be declared either in written form (e.g. by order confirmation) or by delivery of the goods to the buyer.

§ 3 Delivery Term and Delay in Delivery

(1) The delivery term shall be agreed individually and/or stated by us when the order is accepted.

(2) In case we cannot keep binding delivery terms due to reasons beyond our control (unavailability of the service/performance), we shall immediately inform the buyer and give the expected new delivery period. If the service is not available within the new delivery period, we shall be entitled to withdraw from the contract in whole or in part; we will reimburse an already made payment of the buyer without delay. A case of non-availability of service within the meaning of this clause shall be in particular our supplier's failure to supply us in good time if we have concluded a congruent covering transaction and it is neither our sub-suppliers nor our fault or we are not obligated to procure in the individual case.

(3) Whether delivery is in default shall be determined according to statutory law. In any case a reminder by the buyer is required. If we are in default in delivery, the buyer may request liquidated damages for his damage caused by the delay. The liquidated damages are 0.5 % of the net price (delivery value) for each full calendar week of the delay, however in total a maximum of 5 % of the delivery value of the goods delivered in delay. We reserve the right to prove that the buyer has incurred no loss at all or a loss far below the above mentioned liquidated damages.

(4) The rights of the buyer according to § 8 of these General Terms and Conditions and our statutory rights, in particular in case of an exclusion of the obligation to perform (e.g. due to the impossibility or unreasonableness of performance and/or supplementary performance) shall remain unaffected.

§ 4 Delivery, Passing of the Risk, Default of Acceptance

(1) Delivery shall be ex works which is also where the place of performance for the delivery and a possible supplementary performance is. Upon the request and at the expense of the buyer the goods shall be sent to another destination (sale by delivery to a place other than the premises of the buyer). Unless otherwise agreed we shall be entitled to determine the type of shipment (in particular the forwarding company, the dispatch route, packaging).

(2) The risk of accidental loss and accidental deterioration of the goods shall pass to the buyer upon the surrender at the latest. However, in case of a sale by delivery to a place other than the premises of the buyer the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay shall already pass when the goods are delivered to the forwarding agent, the carrier or to the person or institution which has been appointed to carry out the delivery. In case an acceptance has been agreed, this is authoritative for the passing of the risk. The surrender and/or acceptance shall be deemed to have taken place if the buyer is in default of acceptance.

(3) If the buyer is in default of acceptance, if he fails to cooperate or if our deliveries are delayed for other reasons for which the buyer is responsible, then we shall be entitled to request a compensation for the damage caused including additional expenditure (e.g. storage costs). We charge 0.5 % of the net price (delivery value) per week, however in total a maximum of 5 to 10 % of the delivery value of the goods accepted with a delay or not accepted at all per calendar day, starting upon the period of delivery and/or - if there is no delivery period - upon the notification that the goods are ready for delivery.

The proof of a higher damage and our statutory claims (in particular the reimbursement of additional expenditure, adequate compensation, termination) shall remain unaffected, however the flat fee shall be offset against further monetary claims. The buyer may prove that no or only a lower damage than the above flat amount has been caused.

§ 5 Installation, Assembly, Acceptance

(1) The costs incurred for installation, assembly etc. shall be paid by the buyer unless other agreements have been made in writing.

(2) If installation and/or assembly are delayed because of circumstances beyond our control, the buyer shall bear the costs incurred.

(3) After installation and/or assembly of the delivery item, the acceptance of the delivery by the buyer shall take place upon our request within two weeks. Otherwise the acceptance is deemed to have been performed. This also applies if the buyer starts to use the delivery item (initial operation). An acceptance protocol shall be made which has to be signed by the buyer.

§ 6 Prices and Payment Terms

(1) If nothing else has been agreed in the individual case, our current prices at the time of contract conclusion shall apply, i.e. ex works plus statutory turnover tax.

(2) In case of a sale by delivery to a place other than the premises of the buyer (§ 4 section 1) the buyer shall bear the transport costs ex stock and the costs of a transport insurance possibly requested by the buyer. Transport costs shall be agreed individually. Possible duties, fees, taxes and other dues shall be borne by the buyer.

(3) The purchase price becomes due and has to be paid within 14 days after invoicing and delivery and/or acceptance of the goods. However, within the scope of an ongoing business relationship we shall at any time be entitled to perform delivery in whole or in part only against payment in advance. We state such a reservation upon order confirmation at the latest.

(4) Upon the expiration of the above payment term the buyer shall be in default. During the default period interests shall be paid for the purchase price in accordance with the applicable statutory default interest rate. We reserve the right to assert further damage due to the default. Our claim for commercial maturity interest (§ 353 German Commercial Code) against merchants shall remain unaffected.

(5) The buyer shall only be entitled to set-off rights and rights of retention if his claim has been established by a court or is undisputed. In case of defects in delivery, the counterclaims of the buyer, in particular according to § 7 section 6 sentence 2 of these General Terms and Conditions shall remain unaffected.

(6) If it becomes evident after contract conclusion (e.g. by a request for the opening of insolvency proceedings) that our claim to the purchase price is endangered due to the buyer's inability to pay, we shall be entitled to withdraw from the contract (§ 321 German Civil Code) – if necessary after setting a time limit – according to the statutory provisions to refuse performance. In case of contracts on the manufacture of specific items (custom-made items) we can state our withdrawal immediately, the statutory provisions on the dispensability of fixing a period of time shall remain unaffected.

§ 7 Reservation of Proprietary Rights

(1) We reserve the proprietary rights in the goods sold until full payment of all our current and future outstanding bills from the purchase contract and an ongoing business relationship (secured claims).

(2) Prior to the complete payment of the secured claims the goods subject to reservation of title must not be pledged to third parties, nor assigned as collateral. The buyer has to inform us without delay in written form if a request for the opening of insolvency proceedings has been made or in case third parties access to goods (e.g. seizures) which are still our property.

(3) If the buyer's conduct is contrary to the contract, in particular in case of non-payment of the purchase price due, we shall be entitled to withdraw from the contract in accordance with the statutory provisions and/or request surrender of the goods on the basis of the reservation of title. The request to surrender the goods does not include the statement of withdrawal; we shall rather be entitled to demand surrender of the goods and reserve the right of withdrawal. If the buyer does not pay the purchase price due, we are only allowed to assert these rights if we have set an adequate term for payment without success or if such a period need not be set in accordance with the statutory provisions.

(4) Until revoked according to (c) below the buyer shall be entitled to resell the goods under reservation of title in the ordinary course of business and/or to process them. In this case the following terms shall apply in addition.

(a) The reservation of proprietary rights includes the products created by processing, mixing or combining our goods for their full value and we shall be considered as their manufacturer. In case the proprietary right of third parties remains when processing, mixing or combining goods, we shall acquire co-ownership in the ratio of the invoiced values of the processed, mixed or combined goods. Apart from that the same applies to the product created as to goods delivered subject to the reservation of title.

(b) The claims against third parties from the resale of goods or products shall already now be assigned by the buyer to us in total and/or in the amount of our possible co-ownership ratio in accordance with the above paragraph as a security. We shall accept the assignment. The obligations of the buyer named in section 2 are deemed to apply also to the claims assigned.

(c) Apart from us the buyer remains authorized to collect the receivables. We undertake not to collect the receivables as long as the buyer meets its payment obligations towards us, no faults in providing its service are given and we do not assert the reservation of title by exercising a right according to section 3. If this is the case however, we may request that the buyer informs us of the claims assigned and of the debtors, gives all data required for collection, hands over the relevant documents and informs the debtor (third party) of the assignment. In this case we shall also be entitled to revoke the buyer's right of resale and processing of the goods subject to reservation of title.

(d) If the realizable value of the securities exceeds our receivables by more than 10 %, we shall release securities at our option upon the buyer's request.

§ 8 Warranty Claims of the Buyer

(1) Unless otherwise agreed below the statutory provisions shall apply for the rights of the buyer in case of defects of quality or title (including wrong or short delivery as well as incorrect assembly or insufficient assembly instructions). The statutory special provisions in case of a final delivery of the goods to the consumer (supplier's recourse according to §§ 478, 479 German Civil Code) shall remain unaffected in all cases.

(2) The basis for our liability for defects shall above all be the agreement on the quality of the goods. All product descriptions which are part of the individual contract are deemed to be an agreement on the quality of the goods; here it does not make any difference whether the product description has been issued by the buyer, the manufacturer or by us.

(3) In case no agreement on the quality has been made, it has to be assessed in accordance with the statutory provision whether a defect is given or not (§ 434 section 1 p. 2 and 3 German Civil Code). However, we do not accept any liability for public statements of the manufacturer or other third parties (e.g. advertising messages).

(4) The warranty claims of the buyer presuppose that the buyer fulfilled its statutory examination and notification obligations (§§ 377, 381 German Commercial Code). If during the examination or later on a defect is detected, we shall be informed immediately in written form. The notification shall be deemed immediate if submitted within one week, for keeping the time limit the timely dispatch of the notification is sufficient. Regardless of this obligation to examine and notify, the buyer has to notify obvious defects (including wrong or short delivery) within two weeks after delivery in written form, here too for keeping the time limit the timely dispatch of the notification is sufficient. If the buyer fails to properly examine and/or notify a defect, our liability for the notified defect is excluded.

(5) If the product supplied is defective, we can first choose whether we will provide supplementary performance by rectification of the defect (rework) or supply a product free of defects (replacement) Our right to refuse supplementary delivery according to the statutory provisions shall remain unaffected.

(6) We shall be entitled to perform the supplementary performance owed only if the buyer pays the purchase price due. The buyer, however, shall be entitled to retain part of the purchase price in a ratio adequate to the defect.

(7) The buyer has to give us appropriate time and opportunity for the supplementary performance owed, in particular hand over the rejected goods for inspection purposes. In case of a replacement delivery the buyer has to return the defective goods in accordance with the statutory provisions. The supplementary performance neither includes the disassembly of the defective item nor the re-installation if we originally were not obliged to perform the installation.

(8) The expenses for inspection and supplementary performance, in particular transport, travel, work and material costs (not: disassembly and installation costs) shall be borne by us if a defect is actually given. Otherwise we can request reimbursement of the costs incurred (in particular inspection and transport costs) due to the unjustified request for rectification, unless the lack of defectiveness could not have been detected by the buyer.

(9) In urgent cases, e.g. when the operational safety is endangered or to avoid disproportionate damage, the buyer shall be entitled to rectify the defect and to request compensation from us for the objectively necessary expenses. We have to be informed immediately - if possible in advance - of such a self-rectification. The right to remedy defects itself is not given, if we were entitled to refuse an adequate supplementary performance in accordance with the statutory provisions.

(10) If the supplementary performance failed or an adequate time limit to be fixed by the buyer for the supplementary performance expired unsuccessfully or is not required according to the statutory provisions, the buyer may withdraw from the purchase contract or reduce the purchase price. However, in case of a minor defect there shall be no right of withdrawal.

(11) Damage claims of the buyer and/or reimbursement of futile expenditures exist even in case of defects only according to § 8 and otherwise they shall be excluded.

§ 9 Other Liability

(1) Unless nothing else has been stated in these General Terms and Conditions including the subsequent provisions, we shall be liable in case of a violation of contractual and non-contractual obligations according to the statutory provisions.

(2) We shall be liable for damages - regardless of the legal bases - within the scope of the fault-based liability in case of intent and gross negligence. In case of ordinary negligence we shall be liable subject to a milder standard of liability in accordance with the statutory provisions (e.g. for care exercised in our own matters) only

a) for damage resulting from the loss of life, bodily injury or damage to the health,

b) for damage resulting from a not insignificant breach of an essential contract obligation (fulfilment of an obligation which only makes the proper execution of the contract possible and the observance of which the contract partner regularly relies on and may expect); in this case however, our liability is limited to the replacement of the foreseeable, usually occurring damage.

(3) The limitations of liability resulting from section 2 shall also apply in case of a breach of duty by and/or to the benefit of persons for whose faults we are liable in accordance with statutory provisions. They do not apply if we fraudulently concealed a defect or assumed a guarantee for the quality of the goods and for the claims of the purchaser in accordance with the Product Liability Act.

(4) The purchaser may only withdraw or terminate in case of a breach of duty which is not a defect, if we are responsible for the breach of duty. A free right of termination of the purchaser (in particular according to §§ 651, 649 German Civil Code) shall be excluded. In addition the statutory preconditions and legal consequences shall apply.

§ 10 Limitation Period

(1) In case an acceptance has been agreed, the limitation period starts upon acceptance and/or initial operation (§ 5 section 3), otherwise upon the transfer of risk.

(2) By way of derogation from § 438 section 1 no. 3 German Civil Code, the general limitation period in case of newly produced goods for claims from defects of quality and title is one year. This does not apply if the commodity is a building structure or an item which has been used as a building structure according to its customary use and which caused its defect (building material).

(3) By way of derogation from § 438 section 1 no. 3 German Civil Code the general limitation period in case of used goods for claims from defects of quality or title is three months.

Further special provisions as to the period of limitation (in particular § 438 section 1 no. 1, section 3, §§ 444, 479 German Civil Code) also remain unaffected.

(3) The above limitation periods of the sales law also apply to contractual and non-contractual damage claims of the buyer which are based on a defect of the commodity, unless the application of the regular statutory limitation period (§§ 195, 199 German Civil Code) would result in a shorter limitation period in the individual case. Damage claims of the buyer according to § 8 section 2 sentence 1 and sentence 2(a) and according to the Product Liability Law however, become time-barred exclusively in accordance with the statutory limitation periods.

§ 11 Choice of Law and Place of Jurisdiction

(1) For these General Terms and Conditions and the contract relationship between us and the buyer the law of the Federal Republic of Germany shall apply to the exclusion of international uniform law, in particular the United Nations Convention on Contracts for the International Sale of Goods.

(2) If the buyer is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive – even international - place of jurisdiction for all disputes resulting directly or indirectly from the contractual relationship shall be our business location. The same shall apply if the buyer is an entrepreneur within the meaning of § 14 German Civil Code. However, in all cases we shall also be entitled to file a suit at the place of performance of the delivery obligation according to these General Terms and Conditions and/or a prior-ranking separate agreement or at the general place of jurisdiction of the buyer. Prior-ranking statutory provisions, in particular as to exclusive jurisdiction shall remain unaffected.