

## Terms and Conditions of Sale and Delivery

### I. General, scope of application

Our General Terms and Conditions of Sale and Delivery apply exclusively to all our offers and all purchase contracts, contracts for work and services and contracts for work and materials with us, including consultations. We do not recognise any terms and conditions of the customer which conflict with or deviate from our Terms and Conditions of Sale and Delivery unless we have expressly agreed to their validity in writing. Our Terms and Conditions of Sale and Delivery shall apply even if we carry out the delivery or service to the customer without reservation in the knowledge that the customer's terms and conditions conflict with or deviate from our Terms and Conditions of Sale and Delivery.

### II. Offers – Order placement

Our offers are always subject to confirmation unless they are expressly designated as binding. Verbal agreements and commitments require our written confirmation in order to be effective. The offers represent a request for the submission of a purchase offer by the customer. A contract is only established by order confirmation in text form or by delivery of the ordered goods or performance of the ordered service.

Unless otherwise agreed, all prices are quoted in euros, net of VAT, which will be invoiced separately. The VAT rate valid on the day of delivery shall be charged, even if a different VAT rate is specified in offers and order confirmations.

### III. Delivery time, delivery, transfer of risk

1. Excess or short deliveries of 10% of the contract quantity are permissible. In the case of dispatch of the goods, the weight determined in our works / warehouse or, in the case of drop shipments, the weight determined in the works / warehouse of our supplier alone shall be decisive. This also applies to any natural weight loss.
2. The delivery period shall begin with the dispatch of the order confirmation, but not before all questions concerning the order have been clarified. Changes in the purchase order cancel the delivery date and require a new determination of the delivery date. Partial deliveries in the due time and quantity are permissible and can be invoiced separately. We reserve the right to correct and timely self-supply from suppliers and manufacturers. Furthermore, we shall be entitled to withdraw from the contract in whole or in part if we are not supplied with certain raw materials in whole or in part by a supplier in spite of a timely and properly concluded delivery contract.
3. Compliance with our delivery obligation presupposes the timely and proper fulfilment of the customer's obligations. The defence of non-performance of the contract remains reserved.

4. If the customer is in default of acceptance or culpably violates other obligations to cooperate, we shall be entitled to demand compensation for the damage incurred by us in this respect, including any additional expenses. We reserve the right to assert further claims.
5. The risk of accidental loss or accidental deterioration of the object of purchase shall pass to the customer at the point in time at which he is in default of acceptance or debtor's delay.
6. If force majeure, strikes, lockouts or the effects of industrial action or other unforeseeable events (war, riots, government intervention, shortage of raw materials or energy, fire, water intrusion, machine breakdown, illness, shortage of labour, traffic obstructions, transport difficulties, etc.) prevent us from fulfilling our delivery obligations – regardless of whether these occur in our company or at our suppliers, forwarding agents and freight carriers – we shall be entitled to extend the delivery date by the duration of the obstruction and a reasonable start-up period. If delivery subsequently becomes impossible due to such events, both parties shall be entitled to withdraw from the contract. If such events make the delivery unreasonable for one of the parties, the party concerned shall be entitled to withdraw from the contract.
7. In the event of a delay in delivery, the customer must in any case set us a reasonable period of grace in writing. Thereafter, the customer shall be entitled to withdraw from the contract only if the delivery date has been exceeded by at least 2 weeks. An earlier withdrawal is only permissible if the client proves that compliance with the above deadlines is unreasonable for him. Flat-rate compensation for delay shall not apply.

#### **IV. Liability for defects**

1. Claims of the customer for defects require that he has properly fulfilled his obligations to inspect and give notice of defects pursuant to § 377 of the German Commercial Code (HGB). Notices of defects are excluded if the purchaser has processed the goods or transported them elsewhere from an agreed destination, unless he proves that he did not discover the defect at the agreed destination or before the processing without negligence and that the defect existed at the time of the transfer of risk.
2. For defects in the goods, we shall initially provide warranty at our own discretion by subsequent performance or replacement delivery.
3. If subsequent performance or replacement delivery has become impossible or has failed, the customer shall only be entitled to a reduction in price or withdrawal at our discretion.
4. Information on the composition of the purchased item is of a descriptive nature only. All recommendations for the use of our products during processing are given to the best of our knowledge. However, due to the different requirements and individual

conditions of use, we cannot guarantee the suitability of our goods for a particular purpose if we have not expressly affirmed their suitability for a particular purpose. In any case, the purchaser is obliged to check the suitability for the intended purpose in advance.

5. Any claims for defects on the part of the purchaser shall become statute-barred within 12 months, calculated from the transfer of risk. The limitation period in case of a delivery recourse pursuant to §§ 445b or 478 of the German Civil Code (BGB) remains unaffected by this regulation.

## **V. General liability**

1. Claims for damages of any kind within and without the scope of liability for defects, from delay or impossibility, from incorrect advice, from culpa in contrahendo, from breach of other contractual obligations, from tortious acts or other legal grounds – in particular also in the case of damage which does not occur to the delivered item itself – are excluded, except in the case of intent, gross negligence or the breach of an essential contractual obligation. Essential contractual obligations are those whose fulfilment makes the proper execution of the contract possible in the first place and on whose observance the purchaser may regularly rely.
2. In the absence of intent, liability shall be limited to the foreseeable damage typical for the contract.
3. Claims for reimbursement of expenses in lieu of performance are excluded to the extent that liability would be excluded under the above provisions.
4. The above limitations of liability do not apply to liability for injury to life, limb or health or in the case of liability under the German Product Liability Act or foreign implementations of the EU Product Liability Directive.
5. The statutory rules on the burden of proof shall not be affected by the above provisions.

## **VI. Retention of title**

1. We reserve the right of ownership of delivered goods in accordance with the following provisions, unless delivery against advance payment has been agreed with the purchaser.
2. The delivered goods shall remain our property until payment of all our outstanding claims arising from the business relationship, including incidental costs and interest. This shall also apply to such claims until cheques and bills of exchange have been honoured. In the case of a current account, the property subject reservation of title to shall also serve as security for our claim to payment of the account balance.

3. The processing of the goods subject to reservation of title shall be carried out on our behalf without us incurring any obligations as a result of this. If our goods are processed, combined or mixed with other goods not belonging to us, we shall be entitled to co-ownership of the new item in the ratio of our invoice value of the goods subject to reservation of title to the value of the other processed, combined or mixed goods at the time of processing, combination or mixing. If the purchaser acquires sole ownership of the new item, he hereby assigns to us co-ownership of it in the ratio of the invoice value of our goods subject to reservation of title to the value of the other processed, combined or mixed goods at the time of processing, combining or mixing, and shall keep these safe for us with due commercial care.
4. Resale of the delivered goods, regardless of whether they are unprocessed or processed or combined or mixed, is only permitted to resellers in the ordinary course of business subject to retention of title and only if the claim from the resale passes to us. Pledging or transfer by way of security is prohibited for the purchaser, as is the agreement of a prohibition of assignment. For an assignment of the claim within the scope of factoring, the purchaser requires our consent. The purchaser must inform us immediately of any seizure or any other impairment of our rights by third parties.
5. The purchaser hereby assigns to us in advance his claims arising from the resale of our goods, regardless of whether the sale took place without or after processing, combination or mixing with other goods. We accept the assignment. The value of the goods subject to reservation of title shall be our invoice amount plus a security surcharge of 25%, which, however, shall not be taken into account if third party rights conflict with it. In the event of the resale of our goods after processing, combining or mixing or the resale of the new item created by processing, combining or mixing or the mixed or combined stock, the claim against the purchaser's customer shall be assigned to us in the amount of our invoice value of our processed, combined or mixed goods or only in the amount corresponding to our share of co-ownership if this is lower. This shall also apply in the event of a sale after our goods have become an essential component of another item through combination, mixing or processing with other goods not belonging to us.
6. The purchaser is obliged to provide us with any information desired on the assigned claims upon request and in particular to state the names and addresses of his buyers. In the event of default in payment, we shall be entitled to notify the purchaser's customer of the assignment.
7. The purchaser is authorised to collect assigned claims as long as he duly fulfils his obligations towards us. The purchaser must insure our reserved goods at his own expense if and to the extent that this is customary in the industry. He hereby assigns to us any claims for cover against the insurance company in the event of loss of or damage to our reserved goods.
8. If the value of the securities given to us exceeds our claims by more than 25%, we undertake to release corresponding securities at our discretion at the purchaser's

request. Upon payment of all our claims arising from the business relationship, ownership of the goods subject to reservation of title and the assigned claims shall pass to the purchaser.

9. If the purchaser's national law does not permit retention of title in the case of export, we may exercise all rights which the foreign law grants us to the delivered item. The purchaser is obliged to take all measures and make all declarations necessary for the effective agreement of the reservation of title or a comparable security interest in the delivered item according to his national law.

## **VII. Price, payment**

1. All payment periods apply from the date of invoice. Unless otherwise agreed, payment shall be due immediately net in cash.
2. The statutory interest shall be charged for default periods. If it becomes apparent after conclusion of the contract that our claim to payment is at risk due to the purchaser's lack of ability to pay, we shall be entitled to demand immediate payment of all outstanding claims and to render performance of concluded supply contracts only upon the provision of the first collateral or advance payments. Further legal claims remain unaffected.
3. The purchaser shall only be entitled to rights of set-off and retention if and to the extent that his counterclaims are either in a relationship of mutuality (§ 320 BGB) with the claims asserted by us or have been legally established, are undisputed or have been acknowledged by us. In addition, the purchaser is only entitled to exercise a right of retention insofar as his counterclaim is based on the same contractual relationship.

## **VIII. Final provisions**

1. Should one or individual provisions be invalid, this shall not affect the validity of the remaining provisions and the contract; it shall be replaced by a valid provision which comes as close as possible to the invalid provision.
2. If the purchaser is domiciled in the EU or the European Economic Area, the following shall apply: The exclusive place of jurisdiction shall be Munich if the purchaser is a merchant, a legal entity under public law or a special legal estate or has no general place of jurisdiction in Germany. At our discretion, we may also raise a claim against the purchaser at the court having jurisdiction over the purchaser's registered office. If, however, the purchaser is domiciled outside the EU and the European Economic Area, the arbitral tribunal of the German Institution of Arbitration (Deutsche Institution der Schiedsgerichtsbarkeit e.V., DIS) shall be exclusively responsible for all disputes arising out of and in connection with the contracts concluded under these General Terms and Conditions and shall make the final decision to the exclusion of the ordinary courts of law. The place of arbitration is Munich. The language of the case is German. If one party has to reimburse the other party's legal fees in connection with the



arbitration proceedings, these shall be limited to the costs billable under the German Attorneys' Fees Act (Rechtsanwaltsvergütungsgesetz, RVG).

3. All contracts concluded are subject exclusively to the law of the Federal Republic of Germany, excluding the UN Convention on Contracts for the International Sale of Goods of 11.04.1980. The Incoterms 2010 rules shall apply.

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