

## **Terms and conditions**

### **§ 1 Purview**

(1) These present terms and conditions are valid for any request and order (hereinafter referred to as “order”). These terms and conditions are part of every contract of delivery and/or service or performance between our company and our contractual partners (hereinafter referred to as “purchaser”), and shall also be valid if they are not explicitly agreed upon again in any future business.

(2) We do not accept any adverse delivery conditions or such conditions of our contractual partners deviating from the present terms and conditions, unless we explicitly agree to such conditions in writing. Our delivery conditions shall also be valid if we carry out delivery to the purchaser without reservation despite our knowledge of conditions adverse to or deviating from these present terms and conditions.

(3) Our conditions are only valid for purchasers entering a contractual agreement when acting in their commercial or self-employed professional scope (entrepreneurs) or purchasers who are a body corporate or special fund under public law.

### **§ 2 Contract formation**

(1) Our offers are non-binding and subject to alteration unless otherwise agreed upon.

(2) Amendments, departures or additions to these present terms and conditions, the orders placed, and all agreements made with the purchaser regarding the execution of the respective contract, require our written confirmation in order to become effective. The same is valid for the abandonment of the requirement to put something in writing. Written confirmation via fax shall be sufficient.

(3) We reserve intellectual property rights and copyrights for images, sketches, calculations and further material; this property must not be made available to third parties without our prior written consent. This shall be especially valid for such written material labelled “confidential”.

(4) In case of violation of §2 section 3, the purchaser commits to paying a penalty for breach of contract in the amount of up to 5% of the net-value of the respective order; we will determine such penalty with reasonable discretion.

### **§ 3 Prices and terms of payment**

(1) If not otherwise specified in the order-confirmation, our prices are calculated ex works and excluding packaging; packaging will be invoiced separately.

(2) Our prices are calculated in EURO plus VAT; VAT will be separately invoiced according to governing law on the day of invoicing. For exports, the purchaser additionally bears customs duty as well as any additional fee and tax.

(3) If not otherwise specified in the order-confirmation, the net price is payable without deduction within 30 days of invoicing. We are entitled to claim immediate payment, especially should we obtain knowledge about drastic worsening of the purchaser's pecuniary circumstances after formation of the contract. In case of delayed payment we are entitled to claim default interest of 8% p.a. above the respective base rate. We reserve the right to proof and claim higher damages for delay. The purchaser is entitled to prove lower damages.

(4) The parties agree that, irrespective of any potentially deviating performance condition of the purchaser, payments shall be charged according to §§ 366 Par.2, 367 German Civil Code.

(5) Purchasers are only entitled to offset if their counter claims are legally proven by court or indisputable; the same shall be effective for claims of right to withhold performance or right of retention insofar as these do not result from the same contractual relationship.

(6) Assignments of claims against us without our prior written consent are excluded.

#### **§ 4 Shipping**

(1) Packaging for shipping and any other form of packaging in accordance with packaging regulations will not be taken back; this excludes stillage and barred boxes. The purchaser must dispose of all other forms of packaging at his own expense.

(2) In any case, risk passes to the shipping company, carrier or any other third party assigned to execute delivery, with the handover of the goods to be delivered (start of shipping-process). This shall also be valid for partial deliveries. Should the shipping be delayed for a reason lying with the purchaser, the passing of the risk occurs upon acknowledgment of readiness to ship. The purchaser shall carry any costs of storage after the passing of risk.

(3) Shipments will only be insured against theft, loss during transport, damage by fire, damage by water or other insurable risks upon the purchaser's explicit wish and at his costs. Otherwise, shipments will be executed uninsured at the purchaser's risk.

#### **§ 5 Time of delivery**

(1) Any times and dates for delivery mentioned are non-binding unless we have confirmed their observance in writing. In case of sale by delivery to a place other than the place of performance, the observance of delivery times and dates is determined by the point of time of the respective passing of risk. The starting point of a delivery time confirmed in writing presumes all organisational and technical questions have previously been clarified and that

the purchaser duly fulfils his duties such as, particularly, making any down payment previously agreed upon.

(2) Should the purchaser commit default of acceptance or should he violate other duties to collaborate, we are entitled to claim compensation of the damages we incur, including potential additional expenditures. In such a case, the risk of accidental destruction or accidental impairment of the subject matter shall demise to the purchaser in the moment he commits default of acceptance. Further claims remain reserved.

(3) Any agreement shall be subject to the reserve of correct and timely supply to our company. In cases of force majeure and similar events rendering delivery or performance more difficult or impossible for us for a prolonged period of time, e.g. interruption of operations in the manufacturer's works, difficulties with purchasing materials or power, delays in transport, walkouts or legal lockouts, we are entitled to withdrawal; in case of temporary hindrance, the times and dates of delivery will be prolonged / postponed accordingly in addition to an appropriate resumption period. The purchaser may withdraw from the contract if acceptance of the delivery or performance becomes unreasonable due to the delay.

(4) We are entitled to executing partial deliveries insofar as these are reasonable for the purchaser and his interests.

(5) Any necessary technical or appropriate change to the goods delivered is subject to reservation during the time of delivery insofar as these are reasonable for the purchaser and his interests.

#### **§ 6 Deficiencies to delivery or performance**

(1) The purchaser's claim for defects regarding delivery of newly manufactured goods and of services lapse within 12 months of delivery or acceptance of the goods or services delivered. Claims for defects regarding used products are excluded. Subsequent improvement and subsequent delivery do not justify a restart of the limitation period.

(2) For any defect occurring within the limitation period, we provide warranty through subsequent improvement or replacement, if the defect already existed at the point of time of the passing of risk. Determining the kind of supplementary performance (subsequent improvement and subsequent delivery) resides with us and shall be made according to our choice. Should one of these two kinds of supplementary performance be unreasonable for the purchaser, he is entitled to the respective other way of supplementation.

(3) Should both ways of supplementary performance (subsequent improvement and subsequent delivery) be unreasonable for the purchaser, or should the selected supplementary performance fail or should we refuse it according to § 439 Par. 3 German Civil Code, the purchaser may abate the price of the goods or withdraw from the contract; in

case several goods have been delivered, this is only valid for the defective good, unless the goods were sold or produced as one unit. The purchaser is not entitled to right of withdrawal from the contract and the claim of damages according to § 281 Par. 1 section 3 German Civil Code when asserting a defect which only insignificantly deviates from the agreed nature of the good in question or which only insignificantly impairs the usability of the respective good. Should the purchaser withdraw from the contract, he must pay compensation for the use since the passing of risk in accordance with § 346 German Civil Code.

(4) The purchaser's claim of defects presumes that he observed his obligation of examination and giving notice of defects, particularly in accordance with § 377 German Code of Commercial Law, duly and immediately. We must be informed in writing about any defect noticed immediately, at the latest within three days of receipt of the goods in question. Damaged goods must be kept on hand for loss assessment through us or an authorised third party.

(5) Claims of defects cannot be made for normal wear and tear or damages occurring after the passing of risk as a consequence of inappropriate use, inappropriate storage or disregard of the manufacturer's instructions, assembly or instruction manuals. The same holds true for interference with or manipulation of the goods delivered, unless the purchaser can prove that the defect claimed is not a consequence of this interference or manipulation. The purchaser shall carry any costs resulting from unjustified notice of defects.

(6) The purchaser's claims of expenditures necessary for supplementary performance, particularly costs of transportation, fare, labour costs and costs for material, are excluded insofar as such expenditures increase because the delivered good in question was subsequently brought to a place other than the delivery address, unless this transport results from its intended use.

(7) For sketches or images published or conveyed through us or our accessories, for measurements presented or other performance data, or for samples delivered, we only grant guarantee of quality or guarantee of durability if these instances are explicitly labelled accordingly (§ 443 German Civil Code).

(8) We reserve the right to adjust prices appropriately, in case a decrease or increase of costs, particularly due to labour agreements or changes in prices for material, occurs after the formation of a contract. Such changes will be proven to the purchaser upon request.

## **§ 7 Liability**

(1) For any claims against us, irrespective of their legal basis, particularly for claims due to impossibility, delay, defective delivery, unauthorised action, and insofar as the question of fault arises, we are only liable to the following extent:

a) We accept unlimited liability in cases of intent or gross negligence.

b) In cases of violation of essential contractual obligations as a result of ordinary negligence, as well as in case of illegal actions, our liability – excluding the liability for damages resulting from harm to life, body or health – is limited to foreseeable damages inherent to this type of contract.

c) In cases of violation of non-essential contractual obligations as a result of ordinary negligence, as well as in case of illegal actions, we disclaim liability. This does not hold true for the liability for damages resulting from harm to life, body or health.

The aforementioned disclaimer and limitations of liability are not valid for damages claimed due to potentially assumed guarantees or for claims under the Product Liability Act. The purchaser's right to withdraw from the contract in case of a violation of duties on our side remains unaffected.

(2) Insofar as our liability is excluded or limited in the aforementioned section (1), this shall also be effective for the personal liability of our employees, staff, representatives and agents.

### **§ 8 External installations**

For external installation services, additional service-conditions regarding the process of the installation shall be effective. These will be provided to the purchaser if external installation serviced form a part of the delivery or performance agreement.

### **§ 9 Retention of title**

(1) The delivered goods (goods subject to retention of title) remain our property until the purchaser has paid all amounts outstanding now or for the future.

(2) In case the purchaser owes other liabilities subject to any contractual agreement with us at the point of delivery, irrespective of their legal basis, we reserve the right of retention of the goods delivered until the purchaser has paid the outstanding amounts to their full extent.

(3) In case of distraint, confiscation or other directions or interference through third parties to the goods delivered, the purchaser must immediately inform us in writing. The purchaser shall be liable for the loss occurred, insofar as the third party is unable to pay compensation for any judicial and/or extrajudicial costs of a lawsuit according to § 771 German Civil Process Order.

(4) The processing or alteration of the goods subject to retention of title by the purchaser will always be executed for us as the manufacturer according to § 950 German Civil Code, but without placing us under any obligation. In case the goods subject to retention of title are processed or altered with goods which we do not own, we gain co-property of the new object on the basis of the value of the goods subject to retention of title in relation to the other goods processed at the point of processing. For the object resulting from this process, the same conditions as for the goods subject to retention of title shall apply.

(5) The purchaser is entitled to resell the goods subject to retention of title in due course of business; already at this point however, he transfers all amounts receivable corresponding to the final amount we invoiced (including VAT) which he gains from reselling the goods to his customers or third parties – irrespective of whether the goods subject to retention of title are resold without or after being processed. The purchaser remains entitled to collect any outstanding amount payable after this transfer. Our authorisation to collect payments remains unaffected.

(6) In case of delayed payment on the side of the purchaser, we are entitled to withdraw from the contract and to retract the goods subject to retention of title; to reveal the blanket bond and to use the goods subject to retention of title and the transferred outstanding claims against the purchaser in order to fulfil outstanding payments of the purchaser. In such a case, the purchaser will immediately provide us or our authorised representatives access to the goods subject to retention of title and will hand over these goods. Furthermore, he will disclose to us the outstanding claims and the respective debtors; he will provide all details necessary to draw the respective payments; he will hand over the respective documents and he will inform the debtors about the transfer.

(7) The purchaser is only entitled to resell the goods subject to retention of title outside of Germany if he ensures that we shall be granted the same legal and economic security interests of the goods subject to retention of title.

(8) The purchaser is obliged to handle the delivered goods with care. In particular, he is obliged to insure the goods at replacement value against damage by fire, damage by water, and theft at his own cost.

#### **§ 10 Final clause**

(1) If the purchaser is a merchant, the legal venue for all claims from or related to this contractual partnership (including lawsuits about drafts, cheques and certificates) shall be the court having jurisdiction at the location of our company's headquarters. However, we are also entitled to sue the purchaser in the court having jurisdiction at his company's location. Exclusively legal responsibilities are unaffected by the aforementioned regulations.

(2) Unless otherwise specified in the order-confirmation, the legal venue is our company's location.

(3) For any privity of contract between the contractual parties or in relation to this contract, the Federal Law of the Republic of Germany shall be exclusive. The United Nations Convention on Contracts for the International Sale of Goods (CISG) from 11<sup>th</sup> April 1980 is not effective.

(4) In the event that any provision or any part of any provision of these present terms and conditions shall be void or unenforceable for any reason whatsoever, the remaining

provisions of this agreement shall remain in full force and effect. The parties commit themselves to find instead of the invalid provision, or to fill the potential gap, a regulation that is closest to the intended result and which the parties would have agreed upon if they had known about the invalidity of the first provision. Should the unenforceability result of a provision result from a description of performance or the point of time (date, term) mentioned therein, a regulation for such description or point of time that is closest to the intended point shall become effective instead.