

Standard Business Terms and Conditions

§1 Scope of terms and conditions

(1) Our deliveries, services and offers are made solely on the basis of these terms and conditions. These terms and conditions, therefore, also apply to all future business relationships, even if they are not expressly re-acknowledged and re-agreed. These terms and conditions will be deemed accepted at the latest when the goods or the services are received. Any counter-confirmations by the customer making reference to its own standard terms and conditions of business or purchasing, are hereby rejected.

(2) Any agreements reached between the customer and ourselves for purposes of performing this agreement must be expressed in writing.

(3) Our standard terms and conditions of sale apply only to business persons [*Unternehmer*] within the meaning of § 310 (1) of the German Civil Code (BGB).

§2 Offer and conclusion of contract

(1) Our offers are not binding and may be revoked at any time. Statements of acceptance and all orders will be binding only after we have issued our confirmation in writing or via telefax.

(2) Our employees are not authorised to reach any oral side agreements or to make any oral statements, which go beyond the content of the written contract.

(3) The contract is concluded subject to the condition that we receive a proper and timely delivery from our own suppliers. This condition applies only in the event that the delivery failure is based on grounds for which we are not responsible, specifically where a congruent covering transaction is concluded with our supplier. The customer will be promptly informed about the unavailability of the performance. Any consideration will be promptly refunded.

(4) Any drawings, depictions, measurements, weights or other performance data will be binding only if they have been expressly agreed to in writing.

(5) We retain title to and the copyright in depictions, drawings, calculations and other documentation. This also applies to any written documentation, which is labelled "confidential". The customer must obtain our express written consent before making disclosures to third parties.

§3 Prices and terms of payment

(1) Unless otherwise indicated, we agree to be bound by the prices which are set forth in our offers, for 30 days beginning on the date of the offer. Otherwise, the prices set forth in our order confirmation (plus any applicable statutory value added tax) will govern. Any additional services and deliveries will be invoiced separately.

(2) Unless otherwise set forth in the order confirmation, our prices are deemed "ex works", and do not include the costs of packaging. Packaging will be invoiced separately.

(3) We reserve the right to modify our prices accordingly if, after the conclusion of the contract, there are cost reductions or cost increases (above all, based on collective bargaining agreements or other material price changes). We shall provide such information to the customer upon request.

(4) Special written agreement is required for any early payment discounts [*Skonto*].

(5) Unless the order confirmation provides otherwise, the purchase price will be due and payable net (excluding any price reduction or discount) within 14 days from the date of the invoice. The statutory rules govern the consequences of any payment default [*Verzug*].

(6) Notwithstanding the customer's provisions to the contrary, we will be entitled to apply any payments towards the customer's older liabilities. We agree to inform the customer regarding the type of set-off conducted. If costs and interests are incurred, then we will be entitled to apply payment first towards the costs and then towards the interest and then finally towards the principal.

(7) The customer will have a right to set off, only if its counterclaims either have been reduced to final non-appealable judgment, are uncontested or have been recognised by us. Otherwise, the customer may also be entitled to exercise a right to withhold counter-performance to the extent that its counterclaim is based on the same contractual relationship.

§4 Delivery and service period

(1) Delivery schedules or deadlines, which may be agreed as either binding or non-binding, must be set forth in writing.

(2) Even where binding schedules and deadlines have been agreed, we will not be responsible for any delays in delivering goods and services that are based on a *force majeure* or on events which render the delivery impossible or significantly more difficult for more than just a temporary period of time: events such as, *inter alia*, strikes, lock-outs, regulatory orders, etc., even if these events arise among our suppliers or their subcontractors. The occurrence of such an event allows us either to postpone the delivery of the goods or service for the period of the hindrance itself plus a reasonable start-up period thereafter or to rescind either all or part of the contract with respect to the unperformed portion.

(3) If the hindrance continues for more than three months, then the customer will be entitled - after setting a reasonable grace period - to rescind the still unperformed portion of the contract. If the period for delivering the goods and services is extended or if we are excused from our duty, then the customer may not derive any compensatory damage claims therefrom. We may invoke the aforementioned circumstances, only if we promptly inform the customer.

(4) If we are responsible for failing to meet binding deadlines and schedules or we are in performance default [*in Verzug*], then the customer has a right to claim compensation for any damages resulting from the delay in the amount of 0.5 % for each completed week of the delay, but no more than up to 5 % of the invoiced value of the goods and services affected by the delay. Any additional rights or remedies are excluded, unless the delay is caused by at least our gross negligence [*grobe Fahrlässigkeit*].

(5) We are entitled at any time to deliver a portion of the goods or services, unless such partial delivery would not be of any interest to the Customer.

(6) The due performance of our duty to deliver products or provide services is conditional upon the customer reasonably and duly discharging its own duties.

(7) If the customer is late in accepting our goods or services [*Annahmeverzug*], then we will be entitled to demand compensation for any damage or loss that we incur. From the date that acceptance is considered late, any risk of accidental deterioration or loss will pass to the customer.

§5 Passage of risk

Risk shall pass to the customer as soon as the shipment is delivered to the person conducting the transport or it has left our warehouse for purposes of shipment. If a shipment is delayed at the customer's request, then risk shall pass to it upon notice that shipment is ready for transport.

§6 Liability for defects

(1) Any customer claim based on defects is subject to the condition that the customer has fully complied with the inspection and complaint obligations owed under § 377 of the German Commercial Code (HGB).

(2) If a good contains a defect, then we will have the right, in our sole discretion, to demand subsequent performance [*Nacherfüllung*] in the form of a defect remedy or the delivery of a new conforming (non-defective) product. In the event that the defect is remedied, we are obligated to bear any expenses (including any transport, toll, labour or material costs) required for purposes of remedying the defect, provided that such expenses are not increased because the product has to be delivered to a location other than the place of performance.

(3) Should subsequent performance fail, then the customer may at its discretion demand rescission or a price reduction.

(4) If the customer enforces compensatory damage claims which are based on intentional [*vorsätzliche*] acts or omissions or on gross negligence (including the intentional acts or omission or gross negligence on the part of our representatives or vicarious agents), then we will be liable in

accordance with the provisions of German law. Unless we can be shown to have committed an intentional contractual breach, any compensatory damage liability will be limited to the foreseeable damages which typically arise.

(5) If we culpably [*schuldhaft*] breach a material contractual duty, then we will be liable in accordance with the provisions of German law. In this case, however, the compensatory damage liability will be limited to the foreseeable damages which typically arise.

(6) Liability based on the culpable injury to a person's life, limb or health, will not be affected by this limitation. The limitation also does not apply to any mandatory liability based on the Product Liability Act.

(7) Unless otherwise stated above, liability is excluded.

(8) The limitation period for defect claims is 12 months, beginning when the risk passes.

(9) A prescription period in the event of a recourse claim as defined in §§ 478, 479 BGB remains applicable, and is five years from the date that the defective product is delivered.

(10) In general, only those characteristics which are set forth in the technical product description will be deemed a quality of the good. Any public statements, promotional expressions or advertising by the manufacturer will not constitute a contractually stipulated quality [*Eigenschaft*] of the good.

(11) If the customer receives faulty assembly instructions, then we will be obligated merely to deliver non-faulty assembly instructions and then only if the faulty assembly instructions prohibit an orderly assembly.

§7 Total liability

(1) Irrespective of the legal nature of the enforced claims, liability for compensatory damages will be no more extensive than that stated in § 6 above. This restriction also applies specifically to any compensatory damage claims which are based on fault during the contract formation process [*Verschulden bei Vertragsabschluss*] or breaches of other duties and based on tort claims for compensation arising from property damage in accordance with § 823 BGB.

(2) The limitation under subsection (1) above also applies to the extent the customer demands compensation of useless expenses instead of enforcing a claim for the compensation of the damages.

(3) If compensatory damage liability against us is disclaimed or limited, then such limitation will also apply with respect to the personal liability of our employees, representatives and vicarious agents on such compensatory claims.

§8 Retention of title

(1) We retain title to the goods until all payments owed under the business relationship with the customer have been received. In the event the customer engages in conduct which constitutes a contractual breach (above all, in the event of payment default), we will be entitled to reclaim the goods. If we reclaim the goods, the contract will be deemed to have been rescinded. After regaining possession of the goods for purposes of sale and realisation, we will apply any sale or realisation proceeds towards the customer's liabilities - less any reasonable selling or realisation costs.

(2) The customer is obligated to handle the goods with care. It is specifically obligated to insure the goods against damage from fire, water and theft. It must insure these goods at the replacement value [*Zum Neuwert*] and at its own cost. If maintenance and inspection work is required, the customer must perform such work at its own cost and in a timely manner.

(3) In the event of any seizures or other third party interference, the customer must promptly notify us in writing to allow us to bring legal action in accordance with § 771 of the German Civil Code of Procedure (ZPO). To the extent the third party is not in a position to indemnify us for the court and out-of-court costs of a legal action in accordance with § 771 ZPO, the customer will be liable for any loss that we incur thereby.

(4) The customer is authorised to sell the goods in the ordinary course of business. It agrees, however, to hereby assign - in an amount equal to the final invoice (including VAT) of our claim - those claims, which it may have against its purchasers or third parties based on the resale and irrespective of whether the goods were resold either with or without additional processing. The customer continues to have the right to collect the receivables even after the assignment. Our authority to collect the receivable ourselves is not affected thereby. We agree, however, not to collect the receivables, provided that the customer meets its payment obligations to us from the collected resale proceeds, does not enter into payment default and specifically does not apply for or become subject to a petition to commence composition or bankruptcy proceedings or ceases making payments. If this becomes the case, however, then we may demand that the customer disclose to us the assigned receivables and the debtors, make all statements required for collection, provide all related documentation and disclose the assignment to the debtors (third parties).

(5) The processing and adaptation of the goods by the customer is always performed on our behalf. If the goods are processed together with other property which does not belong to us, then we will become entitled to a co-ownership interest in the new property in a proportion reflecting the ratio between the invoiced value of the goods (the final invoice amount including any VAT) and the invoice value of the other processed goods at the time of the processing. The property created as a result of the processing will become otherwise subject to the same rules as goods which have been delivered under retention of title provision.

(6) If the good is inextricably commingled with other goods not belonging to us, then we will acquire a co-ownership interest in the new property in a proportion reflecting the ratio between the invoiced value of the good (the final invoice amount including VAT) and the other commingled property at the time of the commingling. If the commingling occurs in a manner that the property of the customer is deemed the principal property, then it will be deemed agreed that the customer will assign us a proportionate co-ownership interest. The customer shall ensure that the sole or co-ownership interest created thereby will be preserved for us.

(7) For purposes of securing our claims, the customer agrees to assign to us the claims which it accrues against third parties and which are based on affixing the good to a real property parcel.

(8) At the request of the customer, we agree to release any collateral to which we are entitled, in the event that the realisable value of our collateral exceeds by more than 10 % the claims requiring security. We are obligated to select which collateral to release.

§9 Construction changes

We reserve the right to undertake construction changes at any time. We are not, however, obligated to undertake such changes to any products that had been previously delivered.

§10 Non-Disclosure

Unless otherwise expressly agreed in writing, the information provided to us in connection with the orders will not be deemed confidential.

§11 Governing law, judicial forum, severability

(1) The laws of the Federal Republic of Germany govern these business terms and conditions and the entire legal relationship between the customer and us. The provisions of the UN Sales Convention are not applicable.

(2) To the extent the customer is a merchant [*Kaufmann*], legal entity or a special government fund [*öffentlich-rechtliches Sondervermögen*], the exclusive judicial forum for all disputes arising directly or indirectly from or related indirectly or directly to the contractual relationship will be our registered place of business.

(3) Should any provisions under these terms and conditions or under other agreements be or become invalid, then the validity of all other provisions or agreements will not be affected thereby.

Hamburg, November 14

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