

General Terms of Delivery

§ 1

General – Scope

- (1) Our Terms of Sale apply exclusively. We do not admit regulations on the contrary or terms differing from our Terms of Sale, provided that we have expressly agreed to their validity in writing. Our Terms of Sale do also apply if we execute the delivery to the Buyer unreserved although we know about regulations on the contrary or terms of the Buyer differing from our Terms of Sale.
- (2) All agreements made between us and the Buyer in relation to the execution of this contract are put into writing in this contract.
- (3) Our Terms of Sale do only apply for contractors in terms of § 310 Para. 1 German Civil Code.
- (4) Our Terms of Sale do also apply for all future businesses with the Buyer.

§ 2

Offer – Offering Documents

- (1) If the order can be qualified as offer in accordance with § 145 German Civil Code, we can accept it within 2 weeks.
- (2) We shall retain full title and copyright of illustrations, drawings, costing and other documents. This shall also apply for such written documents which are marked as being “confidential“. For the transfer to any third party, the Buyer requires our express written agreement.

§ 3

Prices – Terms of Payment

- (1) Provided that the order acknowledgement does not state something else, our prices are ex works excluding packaging; packing extra.
- (2) We retain full right to change our prices if cost reductions or increases occur after the conclusion of the contract, especially as a result of labour agreements of material price changes. For those, we will provide evidence to the Buyer on request.
- (3) The legal value added tax is not included in our prices; it is shown separately on the invoice in legal amount of the day of issuance of the invoice, unless other payment terms shall have been agreed.
- (4) The deduction of any discount shall be especially agreed upon in writing.
- (5) Provided that the order acknowledgement does not state something else, the purchase prices are net cash amounts and payable free of any deduction within 30 days after the receipt of the invoice. The legal requirements apply for the consequences of any delay of payment.
- (6) The Buyer shall have the right to set off only if the underlying counterclaims have been conclusively determined by a court, are indisputable or were expressly acknowledged by us. Furthermore, he is entitled to exercise the right to set off insofar as his counterclaim is based on the same contractual relationship.

§ 4

Delivery Period

- (1) The beginning of the delivery period stated by us implies the clarification of all technical problems.
- (2) The compliance with our delivery obligation implies the timely and proper compliance of the obligations of the Buyer. We retain the right of defences of the contract not fulfilled.
- (3) If the Buyer is in default of acceptance or if he culpably breaches other duties to cooperate, we are entitled to claim the arising damages including possible additional expenditures. The right for further claims is reserved.
- (4) If the requirements of Para. (3) are met, the risk of accidental break-up or accidental degradation of the goods is transferred to the Buyer at the moment the Buyer got into default of acceptance or default of payment.
- (5) We are liable in accordance with the legal regulations as far as the underlying contract is a firm deal pursuant to § 286 Para. 2 No. 4 German Civil Code or to § 376 German Commercial Code. We are also liable in accordance with the legal regulations as far as the Buyer is entitled to exercise that his interest in a further fulfilment of a contract is discontinued as a consequence of a default of delivery caused by us.
- (6) Furthermore, we are liable in accordance with the legal regulations as far as the default of delivery is based upon a wilful or grossly negligent default caused by us; we are responsible for any default of our agents or assignees. As far as the delay of delivery is not based upon a wilful default caused by us, our liability for damages is limited to the predictable, typically occurring damage.
- (7) We are also liable in accordance with the legal regulations as far as the delay of delivery caused by us is based upon the culpable breach of a material contractual obligation; in this case, however, the liability for damages is limited to the predictable, typically occurring damage.
- (8) Further legal claims or rights of the Buyer are reserved.

§ 5

Transfer of Perils – Packing Cost

- (1) Provided that the order acknowledgement does not state something else, the agreed delivery is considered to be ex works.
- (2) Transport and all other packaging material pursuant to the packaging ordinance shall not be taken back; with the exception of pallets. The Buyer is obliged to care for the disposal of the packaging on his own expense.
- (3) At the Buyer's option we shall cover the delivery with a transportation insurance; the Buyer shall bear the arising expenses.

§ 6

Liability for Defects and Limitation of Time

- (1) Claims of the Buyer due to defects require that he has properly fulfilled his due duty to inspection and objection in accordance with § 377 German Commercial Code.
- (2) Insofar a defect of the goods is at hand, the Buyer has the option for rectification of defects in the form of removal of defects or for delivery of a new object free from defects. In case of the removal of defects we are obliged to bear all expenses for the purpose of the removal of defects, especially transport, work and material expenses as far as those are not increased by the fact that the goods have to be placed at another place than the place of delivery.
- (3) If the rectification of defects fails, the Buyer is authorised at the Buyer's option to request rescission or abatement.
- (4) We are liable in accordance with the legal regulations as far as the Buyer claims for damages which are based on wilful misconduct or gross negligence, including wilful misconduct or gross negligence of our agents or assignees. As far as we are not charged with wilful breach of contract, the liability for damages is limited to the predictable, typically occurring damage.
- (5) We are liable in accordance with the legal regulations as far as we culpably breach a material contractual obligation; in this case, however, our liability for damages is limited to the predictable, typically occurring damage.
- (6) The liability due to culpable bodily harm with fatal consequences, bodily harm and harm of health will remain unaffected; this does also apply for the imperative liability according to the product liability law.
- (7) Unless otherwise expressly agreed in writing, the liability is excluded.
- (8) The statute of limitation for claims and rights due to defects of deliveries – not matter on which legal ground - is one year. This, however, does not apply for cases of § 438 Para. 1 No. 1 German Civil Code (defects of title of immobile objects), § 438 Para. 1 No. 2 German Civil Code (buildings, objects for buildings or § 634 a Para. 1 No. 2 German Civil Code (building or work whose success consists in the supply of planning or inspection services therefor). The statutes of limitation mentioned in the above clause are subject to a statute of limitation of 3 years. Likewise, the statute of limitation determined in Clause 1 does not apply in case of a delivery recourse in accordance with §§ 478, 479 German Civil Code. The statute of limitation mentioned there remains unaffected; it is five years, calculated from the handover of the defective object.
- (9) The statutes of limitation in accordance with Para. 8 do also apply for all claims for damages against the consignee/vendor associated with the defect – independent of the legal basis of the claim. As far as claims for damages of any kind exist against the consignee/vendor not associated with a defect, the statute of limitation of Para. 8 Clause 1 applies.
- (10) The statutes of limitation in accordance with Para. 8 and 9 apply with the following proviso:
 - a) The statutes of limitation do generally not apply in case of wilful misconduct.
 - b) The statutes of limitation do neither apply if the consignee/vendor has fraudulently concealed the defect or as far as the consignee/vendor has issued a guaranty for the nature of the delivery. If the consignee/vendor has fraudulently concealed the defect, the statutory statutes of limitation apply which would also be applicable if no fraudulency would exist in accordance with §§ 438 Para. 1 No. 1 to 3 and 634 a Para. 1 No. 1 and 2 German Civil Code to the exclusion of the extension of time in case of fraudulency in accordance with §§ 438 Para. 3 or 634 a Para. 3 German Civil Code.
 - c) The statutes of limitation do neither apply for claims for damages in the cases of bodily harm with fatal consequences, bodily harm and harm of health or freedom, for claims in accordance with the product liability law, in case of a grossly negligent breach of duty or in case of breach of material contractual obligations.

§ 7

Joint and Several Liability

- (1) Any further liability for compensation as provided for in § 6 – irrespective of the legal nature of the asserted claim – is excluded. This especially applies to claims for damages due to negligence at conclusion of contract, other breach of duty or tortious claims for damages to property in accordance with § 823 German Civil Code.
- (2) As far as the liability for compensation to us is excluded or limited, this does also apply as to personal liability for compensation of our executives, employees, employee associates, agents and assignees.

§ 8
Retention of Title

- (1) We shall retain full title of the goods until the Buyer has discharged all claims arising from the business relationship. If the buyer shall be in breach of contract, in particular in payment default, we are entitled to repossess the goods. Any repossession of the goods shall not be regarded as a rescission of this contract, unless we would have declared this expressly in writing. Any enforcement proceedings with regard to the goods shall always be regarded as a rescission of this contract. After the repossession of the goods we are entitled to utilise them; the utilisation proceeds shall be credited against the commitments of the Buyer – less reasonable utilisation expenses.
- (2) The Buyer is obliged to handle the goods with care; especially, it is obliged to insure the goods at its own expense against damage by fire, water and theft adequately for the reinstatement value. As far as maintenance and inspection works are required, the Buyer shall carry them out at his own expense in due time.
- (3) In case of enforcement proceedings and other interventions of third parties, the Buyer shall inform us promptly in writing, so that we can file a suit in accordance with § 771 ZPO. As far as the third party is not able to reimburse the juridical and extrajudicial expenses of a suit in accordance with § 771 ZPO, the Buyer is liable for the incidental loss.
- (4) The Buyer shall have the right to dispose of the goods within the ordinary course of business; he hereby assigns to us all claims in the amount of the invoice final amount (including VAT) of our claim arising from the resale against his purchaser independent of the fact whether the goods were resold before or after the procession. The Buyer remains authorised to collect the receivables even after the assignment. Our authorisation to collect the receivables ourselves shall remain unaffected. We are, however, obliged to not collect the receivables as long as the Buyer shall meet his obligations from the collected proceeds, does not get into delay of payment and especially does not file an application for opening bankruptcy, composition or insolvency proceedings or cessation of payment. If this is the case, we can request that the Buyer discloses to us the assigned claims and their defaulters, gives full particulars required for the collection, passes on the corresponding documents and reports the assignment to defaulters (third parties).
- (5) The processing or transformation of the goods by the Buyer shall always be undertaken on our behalf. If the goods are processed together with other objects which are not owned by us, we acquire co-ownership of the new object in due proportion of the value of the goods (invoice final amount, including VAT) to the other processed objects at the point of time of the processing. For the objects emerging from the processing, the same applies as for the goods delivered under retention of title.
- (6) If the goods are intermixed inseparably with objects not belonging to us, we acquire co-ownership of the new object in due proportion of the value of the goods (invoice final amount, including VAT) to the other intermixed objects at the point of time of the intermixing. If the objects are intermixed in such a way that the object of the Buyer is to be regarded as principal object, it is agreed that the Buyer confers to us averaged co-ownership. The Buyer shall keep the arising sole ownership or co-ownership for us.
- (7) The Buyer shall also assign the claims for securing our claims against him to us which arise when the goods are connected with a plot of land against a third party.
- (8) Where our claims shall be secured through the assignment by more than 10 %, any surplus of receivables shall be released in accordance with our choice upon demand of the Buyer.

§ 9
Jurisdiction – Place of Performance

- (1) If the Buyer is merchant, our place of business is the place of jurisdiction. We are, however, also entitled to sue the Buyer at the jurisdiction at his place of business.
- (2) The laws of Germany shall apply; international UN purchase laws shall not apply.
- (3) Provided that the order acknowledgement does not state something else, our place of business is place of performance.

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