

# General Terms and Conditions of Sale

## § 1. Validity, place of performance, jurisdictional venue, applicable law

1. These Terms and Conditions apply to companies if the business is part of the activity of their commercial trade, to legal persons governed by public law or to special funds under public law (§ 310 Paragraph 1 of the German Civil Code (BGB)). Statutory provisions apply to other business partners, in particular to consumer contracts.

2. The exclusive place of performance for both partners for all rights and obligations arising from this agreement is the registered office of our company.

3. The registered office of our company is also deemed to have been agreed as the jurisdictional venue. We shall, however, also be entitled to institute legal proceedings against the Ordering Party at his place of residence.

4. The agreement is subject to the law of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

## § 2. Offer and conclusion of contract

1. If it has been agreed to deliver the goods at least four months after concluding the contract, we are entitled to pass on any increases in the prices of the materials, wages and duties occurring since then to the Ordering Party, provided such increases occurred at least four months after the conclusion of the contract.

2. The prices quoted exclude value-added tax and packaging. The value-added tax valid at the time of the delivery applies.

3. All weight specifications are for freight calculation purposes only.

4. If the contract has not already been concluded verbally or by telephone in a commercially customary manner, it only becomes valid once our written confirmation of order has been issued. Subsequent alterations to the contract concluded in writing must be specified in writing for reasons of legal certainty.

5. We hereby expressly object to any Purchasing Terms and Conditions of the Ordering Party that conflict with our „General Terms and Conditions of Delivery and Payment“; this objection applies also in the case that the Ordering Party has prescribed a special form for the objection. If objection is ruled out, the statutory provisions shall replace the contradictory terms and conditions. Conflicting Purchasing Terms and Conditions shall only be recognised if their application has been confirmed by us in writing.

6. All data required for order processing shall be stored, to which the Ordering Party agrees.

## § 3. Delivery time

1. We shall only be in delay if the agreed delivery time is exceeded by more than four weeks and the Ordering Party has sent us a reminder after the extension period has expired.

2. Agreed times for delivery shall commence on the date of our confirmation of order; if no such confirmation of order is issued, the time for delivery shall commence on the date of the receipt of the order. In both cases, however, delivery deadlines shall not commence before all performance details have been clarified, and shall have been met if the goods have left the works by the end of the time for delivery. We shall not be in delay if we are prevented from complying with our obligation to deliver due to the occurrence of unforeseeable circumstances – whether in our works or the works of our subcontractors – for which we are not responsible or which we could not avert, despite reasonable care being taken in accordance with the circumstances of the case in question, e.g. strikes, lock-outs, accidents and disruption that may lead to a partial or complete stoppage, delays in the delivery of essential raw and operating materials, difficulties encountered in energy supply or other cases of force majeure.

3. We shall be entitled to render partial deliveries and partial services to an appropriate extent.

4. We shall be liable in accordance with statutory provisions insofar as the contract for sale on which the transaction is based is a fixed-date transaction as defined in § 286, Paragraph 2, No. 4 of the German Civil Code (BGB) or in § 376 of the German Commercial Code (HGB). We shall also be liable in accordance with statutory provisions if, as a consequence of any delay in delivery for which we are responsible, the Ordering Party is entitled to assert the right that his interest in the continued fulfilment of the contract has ended.

5. Furthermore, we shall be liable in accordance with statutory provisions if any delay in delivery is the result of a wilful or grossly negligent infringement of the contract for which we are responsible; culpability of our representatives or vicarious agents shall be attributed to us. Insofar as the delay in delivery is not based upon a wilful contractual infringement for which we are responsible, our liability to pay compensation shall be limited to foreseeable damages which typically occur.

6. We are also liable in accordance with statutory provisions insofar as the delay in delivery for which we are responsible is based upon a culpable infringement of an important contractual obligation; however, in such a case, our liability to compensate for damages shall also be limited to foreseeable damages which typically occur.

## § 4. Acceptance

If the acceptance of the goods is delayed for reasons attributed to the Ordering Party, the risk is transferred to the Ordering Party upon notification of the readiness for dispatch; we are entitled to charge for the goods.

## § 5. Packaging, dispatch, transfer of risk

1. Packaging, if required, is undertaken at our discretion. We shall not be liable for goods damaged during transportation. Packaging shall be charged at cost. Packaging, protection and transport aids shall not be taken back, unless agreed otherwise.

2. If no instructions have been given regarding dispatch, the mode of dispatch will be chosen at our discretion, without us taking responsibility for the cheapest form of dispatch.

3. Risk shall pass to the Ordering Party upon transfer to the dispatching agent, or at the latest upon leaving the works, irrespective of who shall bear the delivery charges.

4. If the place of delivery is a delivery address given by the Ordering Party, the Ordering Party is obligated to unload the goods from the truck himself.

## § 6. Payment

1. Our invoices are payable within 30 days of the date of invoice without deduction, unless agreed otherwise.

2. Cash discounts are only permissible if expressly agreed, if the deadline is met and if all payable invoices have been paid in full.

3. We expressly reserve the right to accept or refuse bills of exchange or cheques; they will only be accepted for payment purposes and are only deemed to be valid as payment with the effect of a discharge once they have cleared our account. Discount charges shall be payable by the Ordering Party and must be paid to us immediately in cash.

4. The Ordering Party shall renounce any claim to right of retention arising from any previous or other transactions associated with the current business relationship. Setting off with counterclaims shall be deemed inadmissible unless said counterclaims have been recognised by us and are due for payment or have been determined to be final and legally binding.

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5. All our payment claims, including any bills of exchange received, shall become immediately payable if the payment terms and conditions are not adhered to or if after the respective conclusion of contract we become aware of circumstances that would tend to diminish the Ordering Party's creditworthiness. Furthermore, in such a case we are entitled to execute any outstanding orders only against pre-payment, unless the Ordering Party has provided a security at our request. We have the right to withdraw from the contract after a reasonable period of grace. We can then prohibit the reselling of the goods delivered with retention of title and demand the immediate return of the goods or the transfer of direct possession of the goods at the Ordering Party's expense.

## § 7. Retention of title

1. The goods are supplied subject to retention of title pursuant to § 448 of the German Civil Code (BGB) and subject to the following qualifications.

2. We shall retain the ownership of the goods until all existing or future claims against the Ordering Party arising from the business relationship are settled in full.

3. Any acquisition by the Ordering Party of the right of title for the goods subject to the retention of title in the event of processing the said goods into a new object is excluded. Any possible processing is carried out by the Ordering Party on our behalf. The processed product only serves as security for the Seller of the goods subject to the retention of title up to the amount of the value of such goods subject to the retention of title. In the event of processing by the Ordering Party with other goods that do not belong to our company, we shall be entitled to co-ownership of the new object in proportion to the value of the goods subject to the retention of title to the other processed goods at the time of processing. The same applies concerning the goods subject to the retention of title regarding the new product that results from the processing of our delivered article. They are deemed to be goods subject to retention of title as defined in these Terms and conditions.

4. The Ordering Party's claims arising from reselling the goods subject to retention of title is already now ceded to us regardless of whether the goods subject to retention of title are resold prior to or after processing or whether they are resold to one or several buyers. The ceded claim serves to secure the conditional vendor's claims only to the amount of the value of the respective goods subject to retention of title sold. In the event that the goods subject to retention of title are sold by the Ordering Party together with other goods that do not belong to our company, whether prior to or after processing, the assignment of the purchase price claim shall only apply to the value of the goods subject to retention of title which, together with the other goods, were the subject of this contract for sale or part of the object of purchase.

5. The Ordering Party shall only be entitled and authorised to resell the goods subject to retention of title on condition that the purchase-money claim from the resale in accordance with sub-clause 4 is transferred to us.

6. The Ordering Party is entitled to pursue his claims from the resale in spite of the assignment. Our right to collect the claim remains unaffected by the Ordering Party's right to collect the claim. We shall not collect debt claims ourselves as long as the Ordering Party duly fulfils his payment obligations. At our request, the Ordering Party shall provide us with details of the respective debtors of the assigned claims and shall inform the debtors of the assignment.

7. Our retention of title is conditional in that, when full payment of all the company's claims from the transaction concerned has been made, ownership of the goods subject to retention of title shall be readily transferred to the Ordering Party and the assigned claims shall be returned to the Ordering Party. We undertake to release at our choice securities which exceed the value of our claims by 25 %, provided that, except for deliveries in the genuine current account, a release of such deliveries or the respective replacements has been paid in full.

8. The Ordering Party already now gives us irrevocable unimpeded access to his grounds or his premises or depositary in order to exercise the retention of title after our withdrawal from the contract. No judicial title is required for this.

## § 8. Warranty and limited liability

1. In the event of damage in transit, i.e. visible damage to packaging or the goods conveyed, the recipient is obligated to request written certification from the haulier accordingly. In this case, it does not suffice to merely give the haulier a signed acknowledgement of receipt.

2. Notification of other defective deliveries, in particular deliveries that deviate from the order, must be given in writing concerning visible defects within eight days of the delivery of the goods and with hidden defects within eight days of the discovery of such defects; the shipment date and the date of receipt of the response letter shall determine the calculation of the return period. The deviation from the order or the defect must be described in detail.

3. If the Ordering Party resells the goods and then has recourse due to warranty claims, the time limit for claims given in sub-clause 2 also applies if the Ordering Party did not examine the goods himself and the defect would have been visible to the Ordering Party following the customary examination of the goods.

4. Warranty claims are not created if the Ordering Party has failed to give crucial information regarding the expected demand or if the defects are attributable to a violation of installation instructions, improper use or handling, extraordinary and unforeseeable stress, natural wear and tear or interventions or repairs carried out by the Ordering Party or third parties. The same also applies if the goods were not serviced in accordance with our specifications.

5. Contrary to the regulation set forth in § 476 of the German Civil Code (BGB), it is incumbent upon the Ordering Party to furnish evidence that the defect of the delivered goods already existed when the goods were delivered. This does not apply in the case of malicious deceit or intent, or in the event of a defect that cannot, by nature, have been caused to the goods through the influence of the Ordering Party or a third party.

6. Provided that we have also been commissioned to assemble the delivery item, we are entitled to demand a visual inspection after completion of the installation, i.e. an optical assessment of the goods to be carried out together with the Ordering Party. For this purpose, the Ordering Party must assign a person authorised to do this during regular working hours within six hours of our request. A record shall be made of any externally visible defects the goods may have. We undertake to remedy the defects promptly. Then another visual inspection shall take place. A record shall be signed by both parties. If, according to the content of the record, the goods do not show any optical defects, in particular external damage, we cannot be held responsible in future for any claims based on the existence of such defects. The same applies if the Ordering Party refuses to carry out a visual inspection in due time.

7. In the case of timely legitimate complaints, we are entitled at our discretion to eliminate the defect or to provide replacement. If the remedying of the defect or the substitute delivery fails, the Ordering Party is entitled at his discretion to demand a revocation (rescission of the contract) or a respective reduction of the purchase price (abatement). In the case of remedying a defect and replacement, we shall bear the expenses necessary for this purpose. This shall not apply where such expenses have been increased by the fact that the item was subsequently transported to a location other than the premises or the place of business of the Ordering Party or of the other destination. If the delivered goods are returned or exchanged, the Ordering Party must make them available, properly packaged, for transportation. Goods which we have replaced become our property.

8. We shall be liable in accordance with statutory provisions insofar as the Ordering Party asserts claims for compensation for damages which are based upon intent

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or gross negligence on our part, including any wilful or gross negligence of our vicarious agents. We shall also be liable in accordance with statutory provisions insofar as we infringe an important contractual obligation. In both cases, however, compensation for damages shall be limited to foreseeable damages which typically occur. This shall not apply if we have maliciously concealed a defect or assumed a guarantee for the existence of a characteristic.

9. Liability arising from culpable injury to life, body or health shall remain unaffected; this shall also apply for compulsory liability in accordance with product liability law.

10. Incidentally, liability for damages is excluded.

11. In place of the statutory warranty periods, a warranty period of one year is deemed to have been agreed upon in the case of contracts for sale. This period commences from the transfer of risk.

12. The period of limitation in the case of delivery recourse as defined in §§ 478, 479 of the German Civil Code (BGB) shall remain unaffected; such period of limitation shall be five years, calculated from the time of delivery of the defective goods.

## § 9. Joint liability

1. Liability for compensation for damages which goes beyond that envisaged under § 6 is excluded, regardless of the legal nature of the claim being asserted. This shall apply in particular to claims for compensation for damages arising from culpability when concluding the contract, or on account of other obligation infringements or of unlawful claims for compensation for damage to property as defined in § 823 of the German Civil Code (BGB).

2. Insofar as liability on our part for compensation for damages is excluded or limited, then such exclusion or limitation shall also apply with respect to the personal liability for compensation for damages of our employees, workers, members of staff, representatives and vicarious agents.

## § 10. Withdrawal, lump-sum compensation

1. If the Ordering Party withdraws from the contract for reasons for which we are not responsible or if he fails to take delivery of our services despite a deadline and a period of grace, we in turn are entitled to withdraw from the contract. Such rescission shall become effective after receipt of the written notice of rescission by the Ordering Party. Should the rescission take place at a point in time when we have not yet started to produce the goods or if the order is series-produced, the lump-sum compensation amounts to 20 % of the value of goods ordered. After the commencement of production, the lump-sum compensation for items manufactured to order amounts to 70 % of the value of goods ordered because, once it has commenced, production can no longer be interrupted and we cannot store the finished product. In our experience, the proceeds realised in such cases amounts to approximately 30 % of the order value. Lump-sum compensation after the commencement of production can only be claimed if we have pointed this out to the Ordering Party in the confirmation of order.

2. The purchaser reserves the right to provide evidence of lower damages; we reserve the right to enforce a claim for any actual higher damage.

3. We shall also have a right of withdrawal in the cases of force majeure and similar cases listed under § 3 sub-clause 2, provided that we are not responsible for the disturbance and a later performance cannot reasonably be expected of us, e.g. due to schedule difficulties and the risk posed to other contracts.

## § 11. Copyright, confidentiality

1. Illustrations or drawings remain our property of the Seller. Disregard will result in criminal proceedings.

2. Both contractual parties are obligated to keep drawings and documents, information and all other facts that become known to them within this contract and its completion strictly secret, the contractual parties shall not make them available to third parties and shall only use them for the purpose of this contract. Members of staff of the contracting parties must also be informed of their obligation to comply with this requirement, likewise all persons involved in the implementation of the contract, insofar as there is a possibility to influence matters, in particular a contractual relationship.

3. In the event of the violation of the aforementioned obligations, the injured contractual partner is entitled to fully enforce the damages arising.

## § 12. Additional conditions of installation

1. Installations must be requested 14 days prior to the desired installation date. We shall send you an appropriate request form in good time.

2. The statements contained in the VOB Part C DIN 18360 are definitive for our installations.

3. The following performances must be rendered by the customer prior to the installation:

- A suitable access road must be available for the transportation.
- A suitable storage place safe from theft or damage must be available close to the installation site.
- Accessory supplies required, such as power, lifting platforms or cranes, lift trucks, equipment for transportation from the storage place to the installation site and as an assembly aid, scaffolding with a mounting height of at least 2 m must be provided throughout the installation period, also outside the customer's normal working hours.
- It must be ensured that we can carry out our work without obstacles or interruption, also outside the customer's normal working hours; in particular, fitters must have free access to the installation sites, work may not be impeded by other contract work sections, or similar aspects, and obstacles such as cables and ducts in the installation area must be removed for the duration of the work.
- Suitable containers shall be provided to dispose of the packaging material.

4. Surcharges: Work performed outside our normal working hours will be charged additionally according to collective agreement supplements if the Ordering Party expressly requests the installation work to be carried out or continued during such periods or if it becomes necessary due to circumstances for which the Ordering Party is responsible.

5. Waiting times: Hours spent waiting shall be invoiced at cost in addition to our respectively valid daily rates, provided the delay in the commencement of the installation or the interruption of the installation is due to the lack of conditions being met by the customer or to obstructions.

6. Instructions from the management of works to execute additional work that is not part of our contractual obligations shall be performed as time work at our respectively valid daily rates. If we carry out the dismantling of old elements, the transportation and disposal is not included in the scope of services.

7. The customer must carry out a visual inspection after the installation (cf. § 8 sub-clause 6). The visual inspection shall be acknowledged on the installation certificate.

## § 13. Validity of the terms and conditions

The above Terms and Conditions shall also remain in effect if one or several of them are or shall become ineffective.