

## 1 Application

1.1 These general terms and conditions apply to all agreements, offers, deliveries and other services. Accordingly, these terms shall also apply to future commercial relationships even if they are not expressly agreed upon again. Our general terms and conditions shall apply exclusively. Differing or contrary terms shall not apply except if expressly agreed upon in writing. Our general terms and conditions shall also apply if we perform delivery despite our knowledge of differing or contrary terms.

1.2 Our general terms and conditions shall only be applicable with respect to entrepreneurs. An entrepreneur in the sense of our general terms and conditions is a natural or legal person or a partnership with legal personality who or which, when entering into a legal transaction, acts in exercise of his or its trade, business or profession.

1.3 Agreements on an individual basis with the contractual partner must be agreed upon in writing.

## 2 Offer – conclusion of contract

2.1 Our offers are non-binding. We reserve the right of technical changes, as well as of changes of the color, shape and/or weight, as far as the contractual partner can reasonably be expected to accept them.

2.2 Illustrations and descriptions in catalogues, price lists, brochures and on the internet do not claim to be comprehensive and accurate.

2.3 The condition of the goods is exclusively defined by the agreed technical delivery specifications. If we have to deliver conform to customer drawings, specifications, samples etc., our contractual partner shall bear the risk of the suitability for the intended purpose. The contractual condition of the goods is defined at the point that risk is transferred. In this respect, we shall be liable merely for the proper processing.

2.4 We reserve all rights of ownership and copyright for illustrations, drawings, first drafts and other suchlike documents. These may only be modified or provided to third parties with our express approval. Any drawings and other documents submitted within the scope of our offers shall be returned to us at our request if the order is not placed.

2.5 By submitting an order, the contractual partner bindingly declares himself willing to purchase the merchandise ordered. Insofar as the order constitutes an offer within the meaning of § 145 BGB, we are entitled to accept this offer within four weeks.

2.6 The conclusion of the contract shall be subject to the reservation that we receive the supplies on time and free from defects from our subcontractors. Sentence 1 shall only be applicable, if we have concluded a congruent hedging transaction with our subcontractor and if we are not responsible for the delayed or deficient delivery. We will immediately inform our contractual partner about the unavailability of the supplies. If payment has already been made, we shall immediately reimburse our contractual partner.

2.7 If in the course of production according to drawings, samples or other specification provided by our contractual partner, property rights are infringed, our contractual partner shall indemnify us for all claims brought against us by third parties. Our contractual partner has to safeguard, that his specifications do not infringe any rights of third parties or statutory provisions.

2.8 The production of samples is generally done at the expense of our contractual partner. These samples only serve as quality agreement and do not constitute a guarantee.

2.9 If a contractual partner electronically orders merchandise, we shall confirm receipt of the order in due time. Such confirmation of receipt does not constitute a binding acceptance of the order. The confirmation can, however, be combined with an acceptance.

2.10 Manufacturing costs of tools required for serial production will be charged, unless agreed upon otherwise. All tools shall in any case remain our property even if their manufacturing costs have been wholly or partly covered by the contractual partner.

2.11 For call orders we are entitled to procure materials for the entire order and to manufacture the total order quantity immediately. Any customer requests for changes after order placement can, therefore, not be taken into consideration, unless explicitly agreed upon otherwise.

## 3 Prices – terms of payment

3.1 Unless otherwise stated in our order confirmation, our prices are in EURO ex works according to INCOTERMS® 2010, inclusive packaging, exclusive of the statutory sales taxes. The sales tax shall be invoiced in the applicable amount and separately stated once the invoice is issued. Our indicated prices are binding.

3.2 Unless otherwise agreed, the invoiced amount must be paid with a cash discount of 2% within ten days of the invoice date or in full within 30 days of the invoice date. After expiry of this period, our contractual partner is in default of payment.

3.3 The receipt of payment date is the day on which the amount is in our possession or has been credited to our bank account. In case of delays in payment by the contractual partner we are entitled to charge an annual interest rate of 8% above the base interest rate for the duration of the delay.

3.4 Advance or interim payments are non-interest bearing.

3.5 The contractual partner shall be entitled to offset only insofar as his counterclaim is undisputed or assessed in a legally binding judgement.

3.6 A right of retention can only be exercised, if the contractual partner may invoke opposing rights which reciprocally relate to the same contractual relationship. The rights according to Section 320 German Civil Code (defence of unperformed contract) remain unaffected.

3.7 Unless we are obliged to perform in advance, we are entitled to suspend deliveries immediately and to refuse the fulfillment of current contracts, in case of default of payment, application to open insolvency proceedings, submission of an assurance under oath as per Section 807 of the German Code of Civil Procedure (ZPO), shortages of liquid funds or a significant deterioration of financial circumstances, unless the contractual partner executes counter-performance or, on our request, provides appropriate securities.

#### 4 Quantity deviations

4.1 Our contractual partner is put on notice that excess or short deliveries up to 10% are due to technical reasons.

4.2 Such excess or short deliveries do not constitute an infringement of our contractual duties. The price of the supply will be adapted to the quantity actually supplied.

#### 5 Period of delivery

5.1 Specifications on the delivery period are considered as approximation, unless a fixed period or a fixed date has been agreed upon in writing. Delivery periods shall commence at the earliest upon conclusion of the contract, however not before all technical and commercial questions have been clarified.

5.2 The agreed delivery period is adhered to if the subject matter of the contract has left the factory before expiration of the period or if the contractual partner has been notified of our readiness for dispatch.

5.3 The period of delivery will be extended in case of force majeure by the period of obstruction in addition to a reasonable start-up period, if, through no fault of our own, we are restrained from the timely fulfilment of our obligations. Unforeseeable incidents, which we are not

responsible for and which unreasonably impede or make impossible the delivery equate force majeure. Examples for such incidents include material supply problems, operational interruptions, strike, lockout, unavailability of means of transport, intervention by authorities, energy supply problems etc., even if those incidents occur to our suppliers. Should these incidents continue for more than two months, both parties have the right to cancel the contract.

5.4 Observation of the delivery period shall be subject to the performance of the contractual obligations of our contractual partner.

5.5 We shall only be considered to be in default of delivery after our contractual partner has set a reasonable grace period, unless otherwise agreed (e.g. fixed date transaction). The reasonable grace period depends on whether appropriate primary material is present or needs to be procured. The period shall commence with the receipt of the setting of the grace period.

If we are in default of delivery (cf. supra 5.5), our contractual partner may cancel the contract after the fruitless expiry of a reasonable grace period. Unless in case of a fixed date transaction, we are only liable for damages caused by delay subject to Article 9 of these terms and conditions.

5.6 If we owe the entrepreneur delivery on demand, the call-off orders are to be made at the latest within 12 months after order confirmation unless agreed otherwise in writing. We are entitled to deliver to our contractual partner even without call-off order after expiration of the previously mentioned or an otherwise agreed demand period and assert our claims. The contractual partner is then obligated to accept and compensate the delivery.

5.7 We are entitled to carry out partial deliveries as far as the contractual partner can reasonably be expected to accept them.

#### 6 Retention of title

6.1 The property in the delivered goods shall not pass to our contractual partner until all our current and future claims arising from the sales contract and our on-going business relationship have been settled by the contractual partner. In case of breach of contract by the contractual partner, including default in payment, we are entitled to take possession of the goods. The retraction of the goods by us does not constitute a cancellation of the contract, however, we reserve the right to cancel the contract.

6.2 The contractual partner shall handle the goods with due care, maintain suitable insurance for the goods and, to the extent necessary, service and maintain the goods.

6.3 As long as our current and future claims arising from the sales contract and the on-going business relationship with the contractual partner have not been settled, the contractual partner shall immediately inform us in writing if the goods become subject to rights of third persons or other encumbrances.

6.4 Our contractual partner may resale goods subject to the above retention of title in the cause of his regular business. For this case, the contractual partner hereby assigns all claims arising from such resale, whether the goods have been processed or not, to us. Notwithstanding our rights to claim direct payment, the contractual partner shall be entitled to receive the payments on the assigned claims. To this end, we agree not to demand payment on the assigned claims to the extent the contractual partner complies with all his obligations for payment and does not become subject to an application for insolvency or similar proceedings or to any stay of payments. However, if this is the case, we are entitled to demand disclosure of the assigned claims and the respective debtors from the contractual partner as well as all other information required for the collection of payment, delivery of all associated documents and notification of the debtors of the assigned claims.

6.5 The processing of the goods by the contractual partner is always done on our behalf. If the goods are processed with other goods which we have no property in, we shall become co-owner of the goods in the ratio of the value of the goods subject to retention of title to the value of the newly manufactured goods. The newly manufactured goods are subject to the same provisions as the goods subject to retention of title.

6.6 We commit ourselves to release above securities on demand of our contractual partner insofar as the liquidable value of the above securities exceeds the secured claim by more than 10%; we reserve the right to decide which parts of the security will be released.

6.7 If the retention of title in the form of this provision is ineffective under the law of the country of destination, the contractual partner is obliged to cooperate in creating a respective security which complies with the laws of that country.

## 7 Delivery, passing of risk

7.1 Unless otherwise agreed, especially in our confirmation of order, delivery is ex works according to INCOTERMS® 2010.

7.2 The risk of loss or damage to the goods passes to the contractual partner upon transfer, in case of shipment of the goods upon transfer of the goods to the carrier, freighter or other natural or legal person instructed to transport the goods.

7.3 In case of default in acceptance, the risk of loss or damage to the goods passes to the contractual partner upon the moment of default in acceptance.

## 8 Warranty claims of the contractual partner

8.1 Precondition for any warranty claim of the contractual partner is his full compliance with all requirements regarding inspection and objection according to § 377 HGB (German Commercial Code).

8.2 Any claim by the contractual partner based on a defect has to be in writing. As a general rule, a prompt notification has to be carried out within 10 days.

8.3 Warranty claims shall be time-barred after 12 months of the statutory start of the limitation period. In case of damages arising from an injury of life, body or health and in case of intent or gross negligence on our part or by our agents or assistants in performance, sentence 1 of this provision shall not apply and the statutory limitation rules shall apply. If the goods constitute objects in the sense of § 438 para. 1 no. 2 BGB (i.e. building materials and building components), the statutory limitation rules shall apply as well.

8.4 If the delivered goods are defective, we shall be entitled first at our sole discretion to either repair the goods or to replace the goods. The right to refuse the subsequent performance under the statutory conditions remains unaffected.

8.5 The right of the contractual partner to claim damages or to claim reimbursement of futile expenses is limited to the rights arising from Article 9 of these general terms and conditions.

8.6 The quality of the goods is exclusively based on the product description of the manufacturer. Public remarks, acclamation or advertising statements by the manufacturer do not constitute a contractual quality description.

8.7 Outside our standard warranty terms, we provide the contractual partner with no guarantees in the legal sense, unless otherwise agreed. Specific manufacturing guarantees remain unaffected.

8.8 We will not be responsible for any material defects caused by improper use or storage, for incorrect assembly or installation by the contractual partner or third parties, for normal wear and tear or faulty or negligent treatment or for the consequences of improper modifications or repair work carried out by the contractual partner or third parties without our consent.

8.9 In accordance with Article 9, the contractual partner may only demand damage compensation and reimbursement for defects due to costs incurred through dismounting and assembly, as well as associated

transportation costs, if this has been agreed upon by contract.

8.10 We do not accept the charge of any type of processing fee for complaints.

## 9 Liability

9.1 Unless expressly provided in these terms and conditions, we are liable in case of violations of contractual and non-contractual duties according to the statutory provisions of the applicable law.

9.2 We are liable for damages – for whatever legal reason – in case of intent or gross negligence. In case of simple negligence we are only liable

a) for damages arising from the injury of life, body or health,

b) for damages arising from the infringement of a fundamental contractual duty (obligation whose fulfillment is a prerequisite for enabling the proper execution of the contract and obligations in whose compliance the contractual partner relies and may rely on).

Unless there is an intentional breach of duty, our liability for damages is limited to the foreseeable, typically occurring damage.

9.3 The limitation of para. 2 does not apply if we fraudulently conceal a defect or if we have assumed a guaranty for the consistency of the goods. The same applies to claims of the contractual partner according to the German Product Liability Act.

9.4 In case of a breach of duty which does not constitute a defect, the contractual partner may only cancel or terminate the contract if we are responsible for the breach of duty. A further right of termination of the contractual partner (especially according to Sections 651, 649 German Civil Code) is excluded. In other respects, the statutory requirements and legal consequences shall apply.

## 10 Confidentiality

10.1 Each party to the contract agrees to use any documents (including samples, models and data) and knowledge obtained through the business relationship only for the purposes pursued jointly by both parties and not to disclose such documents and knowledge vis-à-vis third parties, also beyond the duration of the business relationship, by applying the same care as would be given to any comparable own documents and knowledge if the other party to the contract declares such material to be confidential or takes an obvious interest in keeping the material secret.

10.2 The obligation does not apply to documents and information which are generally known, or which were already known to the contracting partner on receipt and where the contracting partner was not under obligation

of secrecy, or where they are subsequently conveyed by a third party who is authorized to pass on such documents or information, or where the documents or information are developed by the receiving contract partner without exploitation of documents or information of the other party.

## 11 Miscellaneous clauses

11.1 This contract shall be governed by the laws of the Federal Republic of Germany (excluding the Convention on Contracts for the International Sale of Goods).

11.2 Exclusive place of jurisdiction for all disputes arising out of or in connection with this contract shall be our place of business. The same applies if the contractual partner does not have a general place of jurisdiction in Germany or if neither domicile nor usual place of residence are known at the time of the filing of a lawsuit.

11.3 Should individual parts of these general terms and conditions be invalid, the validity of the remaining provisions shall remain unaffected by this. The entire or partially invalid provision shall then be replaced by a provision as close as possible to its original.

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