

# General Terms and Conditions (T&C)

## § 1 Applicability of the T&C

These T&C apply exclusively to all – even future – orders in transactions with companies, even if reference is not specifically made to them in every transaction. Deviating purchaser's conditions of business or purchasing have no legal effectiveness, even if we do not expressly negate them. Through placing the order and/or accepting the delivery, the purchaser recognises our T&C. Modifications, additions, or subsidiary agreements are binding only when they are agreed in writing.

## § 2 Offers and conclusion of contract

- (1) Our offers are non-binding. Orders are binding for us only if we confirm them in writing or fulfil them by consigning the goods.
- (2) Our employees are not authorised to make verbal subsidiary agreements or to give verbal assurances which go beyond the content of the written contract.

## § 3 Prices

- (1) Our deliveries are on an ex-works basis, and exclude packaging.
- (2) The prices exclude value added tax which must be added at the legally applicable rate.
- (3) We have the right to take into account possible increases in costs of material purchasing, raw materials, salaries, incidental wage costs, and energy costs, if a period of at least 2 months elapses between conclusion of contract and the delivery.
- (4) Additional deliveries and services are invoiced separately. For agreed carriage-paid delivery, the prices specified by us are based on freight costs and subsidiary fees valid at the time of the offer. They will therefore be adjusted for changed rates for freight and subsidiary fees, without the purchaser having a right to withdraw.

## § 4 Delivery periods, force majeure

- (1) Delivery periods and deadlines start from the receipt of our order confirmation by the purchaser, but not before all details for the execution of the order have been clarified, all other prerequisites to be fulfilled by purchaser have been complied with, and an agreed advance payment has been received.
- (2) Deliveries before the expiry of the delivery period are permitted. The day that the goods are shipped is deemed to be the delivery date. We have the right to make partial deliveries, as long as this is acceptable to the purchaser.
- (3) If we are delayed in making a delivery, the purchaser is obliged to set an appropriate grace period of at least 4 weeks. If this grace period expires without producing a result, the purchaser may withdraw from the contract, as long as the goods have not been reported as ready for despatch before the end of the grace period. In a case of delay for which we are slightly negligent, we are liable for damages only up to the amount of 5% of the net order value.
- (4) We are not in delay while the purchaser is in arrears in fulfilling his obligations with respect to us, including obligations arising from other contracts.
- (5) We are not responsible for delays in delivery and performance caused by force majeure and by events which significantly hamper the delivery or make it impossible for us not just temporarily – this in particular includes strikes, lock-outs, orders by authorities, etc., even if they arise at our suppliers or their sub-suppliers. They justify us in delaying the delivery by the duration of the impediment plus an appropriate start-up period, or in withdrawing fully or partially from the contract, regarding the still unfulfilled portion. If the impediment lasts for more than 6 weeks, then after setting an appropriate grace period, the purchaser is authorised to withdraw from the contract, with respect to the part which is still unfulfilled. If the delivery period is extended, or we are released from our obligation, the purchaser cannot derive any claims for damages from this. We can invoke these circumstances only if the purchaser was informed immediately.

## § 5 Transfer of risk

- (1) Loading and delivery are carried out at the purchaser's risk, and are not insured. The risk transfers to the purchaser as soon as the delivery is handed over to the person carrying out the transport, or the delivery has left our warehouse. This also applies when we have undertaken the shipping.
- (2) Additional costs caused by the purchaser's requests - even for carriage-paid delivery - are at his expense. We cover transport insurance only upon special request, and at the purchaser's expense.

## § 6 Inspection on delivery, notices of defects, liability for defects

- (1) The purchaser or his designated recipient must inspect the goods immediately upon receipt. After defects are discovered, processing and treatment of the defective item must be ceased immediately. Obvious defects, including the lack of guarantees, must be reported immediately, and no later than 7 days after receipt of the goods; hidden defects must be reported immediately, and no later than 7 days after their discovery. If the purchaser fails to perform the inspection or to report it punctually and in the correct manner, then the purchaser has no right to claim for defects. The punctuality of the report is decided by the time that we receive it.
- (2) If acceptance or first sample testing were agreed, then a complaint for defects is excluded if the purchaser could have observed the defect through careful acceptance or first sample testing.
- (3) Technical requirements which the purchaser specifies for the goods and which deviate from normal requirements must be expressly reported to us by the purchaser in writing before concluding the contract. If he does not do this, then no defect is deemed to exist if such requirements are not fulfilled.
- (4) For justified complaints of defects, we are obliged, at our choice, to supplementary performance either by delivery of defect-free replacement goods or by corrective work, in which case the rejected parts become our property. As per the legal provisions, we have the right to refuse supplementary performance.
- (5) If we do not fulfil the obligation to supplementary performance, the purchaser can choose to withdraw from the contract or to reduce the price, after he has set us an appropriate grace period, unless this is unnecessary under the legal provisions. If the purchaser withdraws, he is liable for deterioration, destruction, and services not used, not just regarding his own due care, but for every default.
- (6) Further claims for damages and compensation for expenses by the purchaser because of or in connection with defects or consequential damages, regardless of the legal basis, exist only as per § 7. However, even in this case, we are liable only for the typical and foreseeable damages.
- (7) Claims against us under warranty expire 12 months after delivery of the goods, with the exception of the cases governed in § 7 (6).
- (8) If it should result that a claim of a defect is not justified, then the purchaser must bear all costs resulting from the claimed defect.

## § 7 Exclusion and limitation of liability for compensation for damages and expenses

- (1) For all claims directed against us for damages and expenses arising from breach of duty for which we are responsible, regardless of the legal basis, in the case of slight negligence we are liable only in the case of an infringement of fundamental obligations which put the purpose of the contract at risk. Otherwise our liability for slight negligence is excluded.
- (2) In the event of liability as per § 7 (1) and of liability without fault, we are liable only for the typical and foreseeable damages. Claims for purposeless expenditure by the purchaser are not permitted.
- (3) The purchaser decides on his own responsibility about the use of goods or other services provided by us. If we have not confirmed in writing specific characteristics and suitability of the products for a contractually agreed application, then advice on application is in all cases non-binding. In addition, we are liable only as per § 7 (1) for advice which was given or not given.
- (4) The exclusion of liability as per § 7 (1) – (3) applies to the same extent in favour of our company institutions, legal representatives, managing and non-managing employees, and other vicarious agents.
- (5) All claims against us for damages and expenses expire 12 months from delivery of the goods, and in the case of tortious liability, from the knowledge or grossly negligent ignorance of the circumstances justifying the claim or of the person who is obliged to pay compensation. This does not ap-

ply in the event of malice or in the cases specified in § 7 (6).

- (6) § 7 (1) – (5) and § 6 (6) do not apply in a case of strict liability, when liability for loss of life, bodily injury or damage to health exists, where a quality guarantee has been accepted, or there has been malicious failure to disclose a defect.

#### § 8 Terms of payment

- (1) Our invoices are payable without deduction, within 5 days of billing. After this we have the right to invoice interest at the legal level.
- (2) In the event of arrears, and where there are justified doubts about the purchaser's ability to pay and his creditworthiness, we – without prejudice to our other rights – are authorised to demand sureties or advance payments for outstanding deliveries, and to make all claims arising from the business relationship due for immediate payment.
- (3) Only claims which are undisputed or are determined to have legal force authorise the purchaser to offset or withhold payment; this does not apply to counterclaims arising from the same contractual relationship.

#### § 9 Retention of title

- (1) The sold goods remain our property until the complete payment of our claims arising from the business relationship with the purchaser. This also applies to a balance in our favour, if individual or all claims have been included into an open account (current account) and the balance is drawn.
- (2) The purchaser must insure the goods under retention of title, especially against fire and theft.
- (3) The purchaser is authorised to freely avail of the goods in the normal course of business. At this point already, for purposes of surety, the purchaser transfers to us in full the claims arising against third parties from the resale; this also applies in the case of a company sale. The purchaser is authorised to collect these claims on our account, until revocation or until he stops making payments to us. However, the purchaser is not authorised to transfer these claims for the purpose of collecting claims by means of factoring, unless at the same time an obligation is created on the factor to provide counter-performance directly to us, to the amount of our share of the demand, while we still have claims against the purchaser.
- (4) In the event of access by third parties to the goods under retention of title, especially through pledges, the purchaser must state that these are our property and must advise us immediately, in order that we can enforce our rights of ownership. If the third party is not in a position to compensate us for the judicial or legal costs in this regard, then the purchaser is liable for these.
- (5) If the purchaser acts contrary to contract, especially through arrears in payment, then we have the right to repossess all goods under retention of title; the purchaser is then obliged to make these available. In order to determine the status of the goods delivered by us, we may access the purchaser's business premises at any time during normal working hours. Repossession of goods under retention of title represents a withdrawal from the contract only if we expressly state this in writing, or mandatory legal provisions provide for this.
- (6) If the value of the sureties exceed our claims by more than 20%, then we will release sureties of our choice to that extent, if the purchaser so requests.

#### § 10 Returns

In order to ensure appropriate handling of returns, return deliveries are accepted only if they have been notified in writing in advance, are correctly packed, and a returns note stating the order number is attached.

#### § 11 Recall and similar actions

- (1) If one party has indications that a recall or similar action is necessary for the goods, it must immediately inform the other party of its evidence, as well as the documents which support its opinion. The other party must immediately give its opinion on the evidence, and on a possible action. If the parties cannot reach agreement in writing about the necessity for an action, the scope, or the assignment of costs, then one party can make an appointment for an immediate meeting, in which persons from each party who are authorised to make decisions must participate. If one of the par-

ties fails to act as per this planned process, then that party cannot claim against the other party that the action was objectively necessary or unnecessary, unless the other party grossly negligently or maliciously misjudged it.

- (2) If the purchaser is exposed to measures by the market surveillance authorities and needs to defend himself against these measures, then we will provide him with all necessary information and any assistance needed. The purchaser's possible costs or expenses are not reimbursed.

§ 12 Applicable law, place of performance and place of jurisdiction, safeguarding clause, interpretation

- (1) The law of the Federal Republic of Germany applies to all deliveries and services.
- (2) If the purchaser's place of business is outside Germany, then the United Nations Convention on Contracts for the International Sale of Goods (CISG) applies, with the following special provisions: Contract change or cancellation must be made in writing. This also applies to agreements about the abandonment of this agreement on the written form. If goods contrary to contract are delivered, then the purchaser has the right to cancel the contract or to obtain a replacement delivery only if claims for damages against us are excluded or it is not acceptable to the purchaser to use the goods which are contrary to contract and to claim for the remaining damages. In these cases, we are then authorised to correct the defects. If the correction of defects is ineffective and/or it results in an unacceptable delay, then if the purchaser wishes, he has the right to state that the contract is cancelled, or he may demand a replacement delivery. The purchaser is also authorised to do this if the correction of defects causes unacceptable inconvenience or uncertainty about the reimbursement of possible outlays made by the purchaser.
- (3) The place of performance for all contractual obligations is our company offices. The place of jurisdiction is the district or regional court responsible for our company offices. However, we are also authorised to sue the purchaser at his general place of jurisdiction.
- (4) If a provision in these T&C is or becomes ineffective, then this has no effect on the effectiveness of any other provisions or agreements.
- (5) These T&C are to be interpreted according to German legal understanding. In the event of deviations between the German version and a translation, the German version takes precedence.

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