

# GENERAL TERMS OF SALE, DELIVERY AND PAYMENT

## § 1 General – Scope

1. Only our terms of sale are valid; we do not recognize any terms of the customer that conflict with, or differ from, our terms of sale unless we have explicitly agreed to their validity in writing. Our terms of sale are valid even if, being aware of any terms of the customer that conflict with, or differ from, our terms of sale, we make the delivery to the customer without reservation.
2. Any agreements concluded between the customer and us for the purpose of executing this contract are written down in this contract.
3. Our General Terms of Sale, Delivery and Payment are also valid for any future business with the customer.
4. Our terms of sale are only valid in respect of businesses within the meaning of § 310 subsection 1 BGB [*German Civil Code*].

## § 2 Offer – Offer Documentation

1. Our offers are subject to change unless otherwise stipulated herein.
2. We reserve the right of ownership and copyright to any illustrations, drawings, calculations and other documentation. This also applies to those written documents that are marked "confidential". The customer requires our explicit consent before passing them on to third parties.

## § 3 Prices – Terms of Payment

1. Unless otherwise specified in our contractual acceptances, our prices are deemed to be "ex works", excluding packing; this will be invoiced separately.
2. The value-added tax in force is not included in our price; it will be shown separately on the invoice at the rate effective on the invoicing date.
3. Any discount to be deducted must be agreed upon in writing separately.
4. Unless otherwise specified in our contractual acceptances, the purchase price is due for payment net, without discount, within 30 days of the invoice date. The statutory regulations shall apply as concerns the consequences of default in payment.
5. The customer is only entitled to the right of set-off if its counterclaims have been declared final and absolute or undisputed or if we have accepted such. Moreover, it is entitled to exercise right of retention to the extent that its counterclaim is based on the same contractual relationship.

## § 4 Delivery Time

1. The start of the delivery time we specify requires that all technical matters have been clarified.
2. Our observance of our obligation to deliver also requires that the customer has met its obligations promptly and in due form. The right to plea of non-performance is reserved.
3. Should the customer default in acceptance or culpably violate other obligations to cooperate, we are entitled to demand compensation for the damage we have incurred, including any additional expenditure. The right to further claims is reserved.
4. Insofar as the requirements set out in subsection 3 are given, the risk of accidental loss or accidental deterioration of the object of sale passes to the customer at the moment the customer defaults in acceptance or payment.
5. Insofar as the underlying purchase contract is a contract where time is of the essence within the meaning of § 286 subsection 2 No. 4 BGB or § 376 HGB [*German Commercial Code*], the statutory regulations apply to liability. The same applies if the customer is entitled to assert that it has ceased to be interested in continuing with the performance of the contract as a result of delayed delivery for which we are answerable.
6. Insofar as delayed delivery is based on a contract violation caused by us with intent or gross negligence, the statutory regulations apply as concerns liability. If delayed delivery

is not based on a contract violation caused by us with intent, our liability for compensation for damages is limited to foreseeable damage that typically occurs.

7. If delayed delivery for which we are responsible is based on a culpable violation of an essential contract obligation, the statutory regulations apply as regards liability; in this case, however, liability for compensation for damages is limited to foreseeable damage that typically occurs.
8. Any further legal claims and rights of the customer remain reserved.

#### **§ 5 Passing of Risk – Packing Costs**

1. Unless otherwise specified in our contractual acceptances, delivery "ex works" is agreed upon.
2. We are not obliged to accept returned packing unless separate agreements exist to that effect.
3. We will take out transport insurance to cover the delivery if the customer so wishes; any costs incurred for such shall be borne by the customer.

#### **§ 6 Liability for Defects**

1. The rights of the customer as regards complaining about defects require that it has duly fulfilled its duty to examine and give notice of any defects in accordance with § 377 HGB.
2. Insofar as the object of sale has a defect, we are entitled, as we see fit, to carry out supplementary performance either by remedying the defect or delivering a new, flawless object. In the event of remedying the defect we are obligated to bear any expenses necessary for the purpose of remedying the defect, in particular the costs of transport, infrastructure, labour and materials insofar as such do not increase due to the fact that the object of sale was taken to a place different from the place of performance.
3. If supplementary performance fails, the customer is entitled to rescind the contract or demand a reduction.
4. We are liable in accordance with the statutory regulations insofar as the customer asserts damage claims that are based on intent or gross negligence, including the intent or gross negligence of our representatives or vicarious agents. Insofar as we are not assigned the blame of violating the contract with intent, liability for compensation for damages is limited to foreseeable damage that typically occurs.
5. We are liable in accordance with the statutory regulations insofar as we culpably violate an essential contractual obligation; in this case, however, liability for compensation for damages is limited to foreseeable damage that typically occurs.
6. Insofar as the customer is entitled to compensation for damages instead of for performance, our liability is limited to compensating foreseeable damage that typically occurs, also within the scope of subsection 3.
7. Liability due to culpable injury to life, limb or health remains unaffected; this also applies to any liability pursuant to product liability law.
8. Unless otherwise provided for above, liability is excluded.
9. The statutory period of limitation for warranty claims is 12 months calculated as of the passing of risk.
10. The statutory period of limitation in the event of delivery recourse in accordance with §§ 478, 479 BGB remains unaffected; it is 5 years calculated as of delivery of the defective object.

#### **§ 7 Joint and Several Liability**

1. Any liability for compensation for damages which extends beyond that provided for in § 6 – irrespective of the legal nature of the asserted claim – is excluded. This applies in particular to claims for damages resulting from fault when the contract is concluded due to other breaches of duty or tortious claims for compensation for property damage in accordance with § 823 BGB.
2. The limitation pursuant to subsection 1 also applies if the customer demands compensation for expenses made in vain instead of claiming compensation for damages.

3. Insofar as our liability for compensation for damages is excluded or limited, this shall also apply to the personal liability for compensation for damages of our employees, workers, associates, representatives and vicarious agents.

## **§ 8 Reservation of Title**

1. We reserve the title to the object of sale until all debts due and owing (including any current account balance claims), to which we are entitled vis-à-vis customers now or in the future as a result of the business relation with the customer, have been met. Should the customer be in violation of the contract, in particular in default, we are entitled – after setting a reasonable deadline – to take back the object of sale or, if applicable, to demand the customer assign its claims for restitution of property vis-à-vis third parties. Our taking back the object of sale constitutes a rescission of the contract. We are authorized to utilize the object of sale after taking it back. The utilization proceeds are to be credited against the debts of the customer, minus appropriate utilization costs.
2. The customer is obligated to treat the object of sale carefully; in particular, it is obligated to insure the object sufficiently at replacement value against fire and water damage and theft. Insofar as maintenance and servicing are necessary, the customer must carry out such in due time at its own expense.
3. a) The customer is to notify us in writing immediately of any levies of execution or other third-party intervention, so that we can file suit in accordance with § 771 ZPO [*Code of Civil Procedure*].  
Insofar as the third party is unable to reimburse us the judicial and extrajudicial costs of a suit in accordance with § 771 ZPO, the customer is liable for the irretrievable amount we have incurred.  
b) The object of sale may not otherwise be pledged or ownership thereof transferred by way of security.  
c) The customer undertakes to advise the third party of our ownership of the object of sale in the event of levies of execution or other third-party intervention.
4. The customer is entitled to sell the object of sale within the ordinary course of business; it transfers to us with immediate effect, however, any outstanding accounts amounting to the invoice total (including VAT) of our outstanding amount, which it accrues from reselling vis-à-vis its purchaser or third party, this being independent of whether the object is sold without or after being processed. The customer remains authorized to collect this debt even after transfer. Our authorization to collect the debt remains unaffected in this respect. We undertake, however, not to collect the debt as long as the customer meets its payment obligations from the collected proceeds, is not in default and, in particular, no petition to institute composition or insolvency proceedings has been filed nor have payments been discontinued. If such is the case, however, we can demand that the customer informs us of the transferred debts and their debtor, provides any information required to collect the debt, hands over the documents pertaining to such and informs the debtors (third parties) of the transfer.
5. a) Processing or alteration of the object for sale by the customer is always done for us, but without any obligation for us. If the object for sale is processed with other articles not belonging to us, we acquire co-ownership of the new object to the value of the object for sale (invoice total including VAT) in ratio to the other processed articles at the time of processing. Otherwise, the same applies for the object ensuing as a result of processing as for the object of sale delivered with reservation of title.  
b) The customer shall keep the (co)-owned object safe on our part free of charge.
6. If the object for sale is mixed inseparably with other articles not belonging to us, we acquire co-ownership of the new object to the value of the object for sale (invoice total including VAT) in ratio to the other mixed articles at the time of mixing. If mixing is done in such a way that the customer's object is to be regarded as the main object, it is deemed agreed that the customer shall assign us proportional co-ownership. The customer shall keep the solely owned or co-owned object for us free of charge.

7. In order to secure the receivables due to us from the customer, the customer shall also transfer to us the debts that accrue vis-à-vis a third party by combining the object for sale with a piece of real estate.
8. At the request of the customer, we undertake to release the collateral securities to which we are entitled to the extent that the realizable value of our collateral securities exceeds the debts to be secured by more than 10%; which collateral securities are to be released is incumbent on us.

#### **§ 9 Manufacture of Tools**

We shall invoice a portion of the costs involved in manufacturing special tools and moulds. We retain ownership of the tools and moulds. The special tools and moulds will not be sold or transferred.

#### **§ 10 Place of Jurisdiction, Place of Performance, Applicable Law, Severability**

1. If the customer is a businessman, our place of business is place of jurisdiction; we are however entitled to take legal action against the customer at the court where its registered office is.
2. The law of the Federal Republic of Germany is valid for these Terms and Conditions, the contract concluded and the entire legal relations between the customer and us. The provisions of the UN Convention on Contracts for the International Sale of Goods in 1980 (CISG) are excluded.
3. Unless otherwise specified in our contractual acceptances, place of performance is our place of business.
4. Should any provisions in these Terms and Conditions or any provisions within the scope of other agreements be or become invalid, this shall not affect the validity of the remaining provisions or agreements.
5. In the event of a provision in this contract being invalid, the parties undertake to find a provision that is mutually agreed upon, the economic effect of which comes as close as possible to that of the invalid provision.