

# GENERAL TERMS AND CONDITIONS

## I. General Regulation

- Our following Terms and Conditions ("GTC") shall apply for the contractual relationship with merchants in the scope of their business activity and with legal persons under public law including special funds under public law.
- Our delivery, performance and offers are exclusively based on these Terms and Conditions. They shall therefore also apply for future business relationships. These Terms and Conditions deem to have been accepted at the latest upon receipt of our products or performance. Any differing general terms and conditions of the contractual partners are opposed. This shall also apply if the business partner refers to his general terms and conditions or purchase conditions by means of a counter-confirmation or in any other way.
- Any conditions or terms differing from our GTC shall only become effective if confirmed by us in writing. These Terms and Conditions replace all former terms and conditions.

## II. Offer and Scope of Delivery

- Documents belonging to the offer like illustrations, drawings, specifications of weight and dimensions are only approximately authoritative as far as they have not been referred to as binding. The supplier may disclose to a third party those plans which have been referred to as confidential by the customer only after having received the customer's permission in writing.
- The offers of the supplier are subject to confirmation and not binding. Acceptances and all orders require a written confirmation from the supplier in order to be legally effective. The same shall apply for supplements, amendments and side-agreements.

## III. Prices and Conditions of Payment

- Prices are subject to alteration without notice. All orders are only accepted on the basis of the price valid at the time of the order and do not contain the costs for shipment. The value-added tax in the statutory amount will be added to the price.
- As far as there is no agreement to the contrary, payment has to be effected without deduction 30 days after the date of the invoice. The payment obligation shall only be deemed fulfilled when the supplier can finally and irrevocably dispose of the amount.
- Even if the customer asserts claims based on defects or counter-claims, a set-off, retention and price reduction is only permissible when the counter-claim is non-controversial or has become res judicata. The customer is not entitled to the retention because of a counter-claim even arising from the same relationship.
- If the term of payment has been extended or if the customer is in default, we are entitled to demand, apart from the purchase price, interest payment corresponding to an interest rate of 8% p.a. over the corresponding basic interest rate.

## IV. Time of Delivery

- The delivery time begins with the sending of the order confirmation.
- The delivery time has been observed if the item has left the warehouse before the delivery time has expired.
- The delivery time shall be renewed appropriately in case of measures in the frame of industrial action like strikes and lock-outs as well as in case of unforeseen obstacles beyond the supplier's control, as far as such obstacles demonstrably have substantial influence on the production and delivery of the products. This shall also apply if such obstacles arise with the sub-suppliers. The above-mentioned circumstances go beyond the supplier's control even if they arise within an already existing delay. The supplier will inform, in important cases, the customer as soon as possible about the beginning and the end of such obstacles.
- If the customer suffers damage due to a delay by the supplier, the supplier will not compensate the damage as long as the supplier has not caused the damage intentionally or by gross negligence.
- If the delivery is postponed on the customer's request, the supplier is entitled to fix an appropriate period with warning of refusal and to dispose of the products after fruitless expiry or to deliver in the scope of the appropriately expired time of delivery.
- The observance of the time for delivery requires that the customer fulfils his contractual obligations.
- As far as not agreed to the contrary, the callable orders have to be completely called within one year.

## V. Bearing of Risks and Acceptance

- The risk of accidental loss, destruction and deterioration ("the Risk") passes to the customer at the latest upon the sending of delivery parts, even if part deliveries have been carried out or the supplier has taken over further obligations for the delivery. The shipment will be insured upon the customer's request on the customer's expenses.
- Is there a delay in delivery for reasons within the responsibility of the customer, the Risk is passed to the customer upon the notification of the readiness to deliver given to the customer. The supplier is, however, obligated to effect such protection by insurance on the expense and request of the customer which the customer demands.
- The customer has to accept the delivered goods even if they show irrelevant defects, reserving the rights mentioned in Chapter VII. of these GTC.
- Partial deliveries are permissible.

## VI. Reservation of Ownership

- The supplier reserves the property in all goods delivered until the customer has paid and/or settled all accounts receivable of the supplier against the customer arising out of the business relationship including the future accounts receivable as well as out of contracts concluded at the same time or later. This shall also apply if single or all accounts receivable of the supplier have been taken over into the current invoice and the balance has been effected and confirmed. In case the customer acts contrary to the contractual obligation, especially in case of default, the supplier is entitled to take back the delivered goods after having sent a warning and the customer is obliged to return the delivered goods to the supplier. A rescission of the contract does not exist if the supplier takes back or levies the delivered goods, unless the supplier has rescinded the contract in writing. The provisions in Section 13 Subsection 3 of the Consumer Credit Act (Verbraucherkreditgesetz) are not affected hereby.
- In case of a levy or other encroachment by a third party regarding the delivered goods, the customer is immediately obliged to inform the supplier in writing. In the frame of a proper business activity, the customer is entitled to resell the delivered goods. The customer, however, already now assigns to the supplier all claims he has towards his customers or a third party regardless whether the delivered goods are resold without or after the processing. Even after this assignment the customer is entitled to collect the accounts receivable. The right of the supplier to collect the accounts receivable is not affected hereby. The supplier, however, undertakes not to collect the accounts receivable as long as the customer ordinarily fulfils his payment obligations. The supplier can demand the customer to inform the supplier about the assigned accounts receivable and the debtor as well as to provide all information needed for their collection and to surrender all necessary documents as well as to notice the debtor about the assignment. If the delivered goods are sold together with other goods which do not belong to the supplier, then the accounts receivable of the customer towards its customer in the amount of the delivery price between the supplier and the customer deem to have been assigned.
- As far as the customer processes or manufactures the delivered goods, this shall be done always for the supplier. If the customer processes the delivered goods with other goods which do not belong to the supplier, then the supplier acquires the co-ownership in the new goods in relation of the value of the delivered goods to the other processed goods at the time of processing. The same shall apply for goods created by the processing. The supplier undertakes to release corresponding securities upon the customer's request if the securities exceed the total amount of not settled accounts receivable by more than 20%.

## VII. Liability for Defects and Delivery

- The supplier is liable for defects as follows:
  - All those parts from which it turns out within 24 months from the beginning of the work that they are of no use or their mercantability is substantially impaired due to circumstances existing before the Risk has passed – especially due to a defective type of construction, poor construc-

tion material or defective manufacturing – are to be repaired or to be replaced by new delivery without further charge according to the choice to be made by the supplier according to his discretion.

The customer must immediately inform the supplier in writing about such a defect. Visible defects have to be given notice of within 8 days after receipt of the goods. Section 377 of the German Commercial Code shall apply for the obligation of the customer to investigate and to give notice of a defect. Replaced parts shall become the property of the supplier. If it is not possible to remedy a defect or to deliver a substitute or the fulfilment has not succeeded, the customer is entitled to rescind the contract or to reduce the purchase price or to demand the compensation of the damage. The compensation of damage is limited to those cases in which the defect has been caused by the intentional or gross negligent behaviour of the supplier or persons employed by the supplier in the performance of his obligation (Erfüllungsgehilfen) or vicarious agents. The claims arising out of a guarantee for certain characteristics, especially those which are to protect the purchaser/customer against the risk of consequential harm caused by a defect are not affected hereby. The liability for damages arising out of an injury of the life, the body or the health due to defects remains unaffected.

- If the delivery delays without the supplier being responsible for it, then the liability lapses at the latest in 24 months after the Risk has passed to the customer.
- The right of the customer to assert claims due to defects is subject to a limitation period of 24 months in all cases from the time point of the timely notification of a defect, at the earliest, however, upon the expiry of the limitation period for buyers in actions for breach of warranty.
  - After an understanding with the supplier, the customer has to give the supplier the necessary time and occasion for all repair work and delivery of replacement which are necessary according to the supplier's discretion. Otherwise, the supplier is free from his liability due to a defect. The customer is entitled to remedy the defect by himself or have the defect remedied by a third party and to demand the supplier to reimburse the necessary costs only in urgent cases where the security of a work is put into danger and for the purpose of the defence against disproportional big damages, whereby the supplier must be immediately informed, or if the supplier is in default of remedying the defect and the customer has a contractually confirmed interest into the timely performance or the supplier rejects seriously and finally to remedy the defects or particular circumstances exist which justify an immediate self-remedy after balancing the mutual interest.
  - As far as the complaint turns out to be justified, the supplier bears, of all direct costs arising out of the delivery of replacement or the repair, the costs of the replaced part including the costs of shipment.
  - In case of improper modifications or repair work done by the customer or a third party without a prior permission from the supplier, any liability of the supplier for all consequences arising out of such actions are suspended.
  - The above-mentioned provisions contain final regulations regarding the liability for the defects of the products and exclude other liabilities for breach of warranty of any kind, as far as there is no intentional or gross negligent behaviour of the supplier or persons employed by the supplier in the performance of his obligations (Erfüllungsgehilfen) or vicarious agents. The liability for damages arising out of injury of the life, body or the health remains unaffected.

## VIII. General Limitation on Liability

- As far as intentional or gross negligent behaviour is not existing, claim for damages arising out of positive violation of performance, culpa in contrahendo, claim in tort as well as out of all other legal grounds are excluded against the supplier and persons employed by the supplier in the performance of his obligations (Erfüllungsgehilfen) or vicarious agents. This shall particularly apply also for the claim of indirect damages or consequential harm caused by defect, unless the liability is based on the guarantee for certain characteristics which shall protect the purchaser against the risk of those damages. The liability for damages arising out of injury of the life, the body or the health remains unaffected.
- We are not liable for any third parties' advertising statement (for example manufacturer in the sense of Section 4 Subsections 1 and 2 of the Product Liability Act) and the persons employed by the manufacturer in the performance of his obligations (Erfüllungsgehilfen) regarding the nature of the purchased product or regarding certain characteristics of the goods in connection with the labelling, as far as this lack of knowledge regarding the advertising statement is not based on our intention or gross negligence or as far as the advertising statements have been correct in an equally entitled way at the time of the conclusion of the contract or as far as the advertising statements could not influence the decision for the purchase. Wear and tear are excluded from the liability for a defect.

## IX. The Right of the Customer on Rescission of the Contract

- The customer can rescind the contract if the whole delivery is finally impossible for the supplier before the Risk has passed to the customer. The customer can then also rescind the contract if the goods of the same kind have been ordered and a certain number of these goods cannot be delivered and the customer has a justified interest into the rejection of partial delivery. If this is not the case, the customer can reduce the counter-performance accordingly.
- If there is a default of delivery in the sense of Chapter IV. of these Terms and Conditions and if the customer sets the defaulting supplier an appropriate grace period for delivery with a warning that he will reject the receipt of the delivery after the expiry of the grace period and the grace period lapses without any success, then the customer can rescind the contract.
- If the impossibility of performance occurs during the default of acceptance or due to the fault of the customer, the customer remains to be obligated to the counter-performance.
- The customer can furthermore rescind the contract if the supplier, due to his own fault, lets pass an appropriate grace period for repair work or delivery of replacement regarding a defect in the sense of these Terms and Conditions for which he is responsible.
- If the customer declares the rescission of the contract, all other furthergoing claims of the customer, particularly the termination or price reduction as well as compensation for damages of any kind, namely those damages which have not occurred to the delivered product itself, are excluded, as far as these damages have not been caused by the intentional or gross negligent behaviour of the supplier or persons employed by the supplier in the performance of his obligations (Erfüllungsgehilfen) or vicarious agents or as far as there are no damages arising out of the injury of the life, the body or the health.

## X. The Right of the Supplier on Rescission of the Contract

- In case of unforeseen events in the sense of Chapter IX. of these Terms and Conditions, as far as they substantially change the economic meaning or the content of the performance or as far as they have a substantial effect on the work of the supplier and in case it turns out after the conclusion of the contract that the performance is impossible, the contract will be appropriately adjusted. As far as this is not justifiable in the economic sense for the supplier, the supplier is entitled to entirely or partly rescind the contract. The customer has no claims for damages due to such a rescission of the contract, unless these claims have been caused by the intentional or gross negligent behaviour of the supplier or persons employed by the supplier in the performance of his obligations (Erfüllungsgehilfen) or vicarious agents. If the supplier intends to rescind the contract, he has to inform the customer immediately after the supplier has become aware of the consequence arising out of the event, even if the extension of the time for delivery has been agreed upon with the customer.

## XI. Applicable Law, Venue and Severability

- The law of the Federal Republic of Germany excluding the Convention of the International Sale of Goods of the United Nations shall apply for these Terms and Conditions as well as for the whole legal relationship between the supplier and the customer.
- The place of performance for all mutual obligations are the premises of the supplier, where the delivery is effected from.
- Should a provision in these Terms and Conditions or a provision in the frame of other agreements be or become void, this does not affect the legal validity of the remaining provisions or agreements.