

# General Terms of Business and Delivery

## 5 1 General Information

- (1) All our deliveries, services and quotations are subject to these terms even without being explicitly mentioned during negotiations. These terms do also apply to all future business transactions, even if they are not repeatedly or explicitly agreed upon. Once the merchandise has reached the customer, these terms are considered to be accepted. These terms also apply to orders of services and goods.
- (2) Conflicting or contradictory terms of the customer do only apply if we have explicitly approved of them in writing. This especially applies to terms which contradict the following provisions regarding liability.

## 5 2 Offer

- (1) Our sales staff is not entitled to make any oral collateral agreements or promises exceeding the content of the written contract.
- (2) Any statements regarding the delivery time are rough and non-binding, unless their binding force has explicitly been confirmed.

## 5 3 Prices

- (1) Our prices are to be understood ex works - including packaging - subject to the addition of the respective Value Added Tax valid at the billing date. The costs of any transport or similar insurance possibly agreed upon will be borne by the customer - subject to any other agreement. In the case of part deliveries each delivery may be billed for individually.
- (2) If more than four months elapse between the conclusion of the contract and the delivery date and if during this time changes in the price basis (e.g. price increases for raw material, pay rises, etc.) occur, we reserve the right to adjust our prices accordingly after informing the customer.
- (3) If no prices have been agreed upon conclusion of the contract, our list prices valid at the delivery date shall apply.

## 5 4 Terms of Payment

- (1) Unless otherwise stipulated in the confirmation of order (or in the invoice), the purchase price is payable net (without any discount) within 30 days as of the date of invoice.
- (2) In the case of default we shall be entitled to demand interest amounting to 8 per cent above the basic interest rate in accordance with Section 288 German Civil Code (BGB). We shall be at liberty to prove and claim further damage caused by default.
- (3) Non-compliance with the terms of payment, default or circumstances that are suitable to decrease the customer's creditworthiness result in immediate maturity of all our claims, even of those arising from other legal transactions with the customer.
- (4) The customer shall only be entitled to setoff if the counterclaims have been legally established, are undisputed or accepted by us.
- (5) The customer shall only be entitled to exercise a retaining lien if the counterclaim is based on the same contractual relationship.
- (6) We are not obliged to accept cheques. Credit entries thereof are always considered as subject to their honouring (as payment, not in lieu of performance); they are available as of the date on which we can dispose of the countervalue.
- (7) We shall reserve the right to further contractual or statutory claims in the case of default.

## 5 5 Delivery Period and Delivery Impediments

- (1) The delivery deadline shall commence with the sending of the confirmation of order, however, only after the customer has provided documents, official approvals and releases to be procured on his part as well as after an agreed down payment has been received and all technical issues have been clarified.
- (2) The delivery deadline shall be deemed to have been observed if by the time of its expiration the delivery item has left our factory or notification of readiness for dispatch has been given.
- (3) In the case of unexpected circumstances which are beyond our control and which we could not avert despite all reasonable care - no matter if they occur at our factory or at a subcontractor - like for example force majeure (e.g. war and natural disasters), delayed raw material supplies, etc. - we shall be entitled to withdraw completely or partially from the supply contract or to extend the delivery date by the duration of the impediment. The same shall apply in case of strikes or lockouts at our factory or at our subcontractors. We shall immediately notify our customers of such circumstances.
- (4) If delivery is unduly delayed, the customer shall be entitled to withdraw from the contract after the expiration of a reasonable extension of time; if delivery is impossible, he shall also have this right without extension of time. Default in delivery shall equal impossibility if delivery is not effected for more than one month. Claims for damages (including any consequential damage) are excluded notwithstanding Section 4; the same applies to reimbursement of expenses.
- (5) The exclusion of liability stipulated in Section 4 shall not apply if an exclusion or a limitation of liability for damage arising from injury of life, body or health has been agreed upon, which is based on breach of duty due to wilful intent or gross negligence on the part of the user or of the user's legal representatives or vicarious agents. Liability is limited to the foreseeable damage typical of the contract. As for the rest it is excluded according to Section 4. The aforementioned provisions shall apply accordingly to reimbursement of expenses.
- (6) If dispatch is delayed at the customer's request, he will be charged the costs accruing from storage.
- (7) Measures and weights shall be subject to the usual deviations. The weight determined by us in our works on officially tested and calibrated scales or by measured work shall be decisive for billing. The customer is entitled any time to check the determination of the weight at his own expense.

## 5 6 Passing of Risk

- (1) The risk shall pass to the customer as soon as the goods are handed to the person carrying out shipment or have left our works for dispatch. If the delivery is made impossible through no fault of ours, the risk shall pass to the customer as soon as he is notified of the readiness for dispatch.
- (2) Delivered items are to be accepted by the customer notwithstanding his rights under § 8,9 even if they feature considerable defects. Part deliveries are admissible in so far as they are reasonable or the customer.

## 5 7 Reservation of Ownership

- (1) We reserve title to all goods supplied until the customer has paid all debts from the business relationship deriving from present or future claims. The reservation of ownership also affects spare parts and exchange parts such as motors, control equipment, etc., even if they are installed since they do not become integral constituents as defined by Section 93 BGB (German Civil Code).
- (2) In the event of breach of contract by the customer, in particular in the case of default in payment, we shall be entitled to take back the goods; the customer shall agree to the taking-back in this case even now. The taking-back shall only represent a withdrawal from the contract if we declare this expressly. The costs accruing from the taking-back (especially transport costs) shall be charged to the customer. We shall furthermore be entitled to prohibit the customer from re-selling or processing the reserved goods and to withdraw the direct debit authorization (§ 7 V). The customer shall only be able to demand delivery of the goods taken back without express notice of cancellation after he has paid the entire purchase price and all costs. The user shall be entitled to assert further damage against the customer caused by the withdrawal if he is able to prove it.
- (3) The customer must treat the goods with care and carry out the necessary inspection and maintenance work.
- (4) The delivered goods and the claims substituting them may neither be pledged nor assigned as security by the customer. We must be informed in writing immediately of seizures or other access by third parties to the reserved goods, so that we can file a suit in accordance with Section 771 ZPO (German Code of Civil Procedure). If we are left with any costs of this suit although we have won the case in accordance with Section 771 ZPO, these are to be borne by the customer.
- (5) The customer shall be entitled to resell, process or mix the object sold in the ordinary course of business; however, he shall assign to us even now all claims deriving from the resale, processing, mixing or from other legal grounds (in particular from assurances or other tortious acts) to the amount of the invoice total (including VAT). The customer shall be entitled to collect the claims assigned to us, notwithstanding our right to collect the claim ourselves. We, however, commit ourselves to not collecting the claim as long as the customer meets his obligations to pay from the collected proceeds, as long as he is not in arrears and no application for adjudication in bankruptcy has been filed or as long as there is no cessation of payments. However, if this is the case, the customer must notify us at our request of the assigned claims and the debtors, give us all the necessary information for the collection, hand over the relevant documents to us and notify the debtor (third party) of the assignment. We shall be able to revoke the direct debit authorization in the event of breach of contract (in particular default in payment) by the customer.
- (6) The reservation of ownership shall also apply to products resulting from the processing, blending or combination with our goods to their full value, with these processes being performed for us as manufacturer. If the reserved goods are processed, mixed or combined with goods of third parties and if they keep their ownership, we shall acquire co-ownership to the new item in proportion of the actual value of these goods.
- (7) The customer shall also assign to us the claims that secure our claims against him, which will arise from the combination of the delivered items with real estate against a third party.

- (8) If the value of the securities established for us exceeds the secured claims in total by 50%, we shall be obliged to release the corresponding amount of the securities we choose.
- (9) Neither the assertion of the reservation of ownership in the event of default in payment or jeopardizing, nor the pawning of the delivered item shall be considered a withdrawal from the contract.

## 5 8 Warranty for deficiencies of the delivery

- In the case of the orderly compliance of the examining and reprimanding obligations coming out of § 377 of the Commercial Code we are liable for deficiencies of the delivery in the way as it is explained hereafter:
- (1) As far as there is a deficiency of the purchased item we have the right to decide whether we will remove the deficiency or deliver an item without deficiency (recompliance). The condition for this is that it is about a significant deficiency. If one or both of these kinds of recompliance are impossible or disproportional, we have the right to refuse it. We can refuse the recompliance as long as the purchaser will not fulfil his liability to payment in the scope that corresponds to the part of the delivery free of defects.
  - (2) If the recompliance mentioned in section 1 is impossible or misses, the purchaser has the right to reduce the purchase price or to withdraw from the contract in accordance with the legal regulations. In particular, this does apply for the culpable time delay or the refusal of the recompliance as well as if it misses for the second time. If nothing of the following (section 4) changes, further claims of the buyer that result from whatever legal arguments (in particular claims for blame at the conclusion of the contract, violation of contractual main and side obligations, unlawful act as well as other liabilities in tort) will be excluded. In particular, this is valid for the claims resulting from damages out of the purchased item as well as for the claim for replacement of the missed profit. Claims that do not result from the defectiveness of the purchased item are also registered.
  - (3) The above-mentioned regulations are also valid for deliveries of another item or of a minor quantity.
  - (4) The exclusion of liability regulated in section 2 is not valid as far as exclusion or a limitation of the liability for damages of the injury of life, body or health is agreed which are based on a wilful or gross negligent violation of obligations by the user or a wilful or gross negligent violation of obligations by a legal representative or a person employed by the user in the performance of his or her obligations. Besides, it is excluded in accordance with section 2. The liability is limited to the typical contractual predictable damage. Moreover, the exclusion of liability is not valid if there is a liability for personal or property damages of privately used items in accordance with the act of defects of the delivered item. It is also not valid in cases of taking-over a warranty and of assuring a characteristic if one of these deficiencies causes our liability. In the case of replacing the expenses the above-mentioned is valid.
  - (5) There will be no warranty for damages resulting from the following: unsuited or improper use, incorrect installation by the buyer or third parties, natural wear, incorrect or negligent treatment, unsuited equipments, defective construction works, unsuited site, exchange materials, chemical, electrochemical or electrical influences (as far as they are not represented by us), changes or repairs done by the buyer or third parties that are improper and do not have our prior agreement.
  - (6) One year after the delivery of the purchased item the claims for recompliance, compensation for damages and replacement of application will fall under the statute of limitations. This is not valid for an item that according to its usual utilization was used for a building and that causes the defectiveness of the building. In this case, the statute of limitations will only take place after 5 years. The claims for reduction and the exercise of a right of rescission are excluded. But in the case of sentence 3, the buyer can refuse the payment of the purchase price in so far as he would have the right because of the withdrawal or reduction. In the case of exclusion of rescission and a refusal of the subsequent payment we have the right to withdraw from the contract.

## 5 9 Liability for side obligations

If the buyer cannot use the delivered item according to the agreement because of our fault (wilfully and gross negligently) as a result of neglected or incorrect execution of suggestions and advices given prior and after the conclusion of the contract as well as of other contractual side obligations (in particular instructions for operation and maintenance of the delivered item), the regulations of § 8 and § 10 are valid to the exclusion of other claims of the buyer.

## 5 10 Withdraw of the buyer and other liabilities for our part

- (1) The following regulations are valid for the violation of obligations out of the warranty for the liability of material defects and they neither exclude nor limit the legal right of rescission.
- (2) The buyer can withdraw from the contract if the whole output is finally impossible. This is also valid in the case of incapability. The buyer has also the right to withdraw from the contract if at a delivery of similar items the execution of a part of the delivery according to the number is impossible by our obligation of representation and if he is not interested in this part delivery. If this is not the case, so the buyer can reduce the quid pro quo. The right of rescission is not valid in cases of substantial violation of obligations.
- (3) If there is a delay of the output and if the buyer gives an appropriate grace after explaining the reasons for the delay and if this grace is not met, the buyer has the right to withdraw from the contract. In cases of a partly delay of the output, then section 1 sentence 2 will be valid. If the buyer claims prior to the delivery in any point another execution of the item to be delivered, so the run of the delivery time will be interrupted until the day of the information about the execution and if the occasion arises to prolong it by the time required for the further execution.
- (4) The withdrawal will be impossible, if the buyer is responsible on his own or at least for the most part for the fact that gives him the right to withdraw or if the fact represented by the user takes place at the point of time of the default of acceptance by the creditor. In the case of impossibility the user's claim for quid pro quo will be kept up in accordance with the legal regulations.
- (5) Other claims for the buyer that arises of whatever legal argument (in particular claims for blame at the conclusion of the contract, violation of contractual main and side obligations, replacement of expenses, unlawful act as well as other liabilities in tort) are excluded. In particular, this is valid for claims for damages out of the purchased item as well as for the claim for replacement of the missed profit. Claims that do not result from the defectiveness of the purchased item are also registered. This is not valid as far as the cause of loss is based on the intent or the gross negligence of the user or a legal representative or a person employed by the user in the performance of his or her obligations. This is also not valid as far as it is about damages that arose from a culpable (wilful or gross negligent) injury of life, body or health. The liability will be likewise excluded in the case where the warranty is taken over as far as a direct violation of obligation initiate a liability. The liability is limited to the typical contractual predictable damages. Besides, it is excluded in accordance with sentence 1.

## 5 11 Place of Performance, Legal Venue and Applicable Law

- (1) The place of performance shall be the place of consignment (works or place of storage).
- (2) If the customer is a trader, Deggendorf shall be the place of jurisdiction. However, we reserve the right to sue the customer at any other admissible jurisdiction.
- (3) All claims and rights resulting from this contract shall be regulated by the non-standardized law applicable in the Federal Republic of Germany (BGB, HGB) to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

## 5 12 Other Provisions

- (1) Any alterations of this contract must be in writing and approved by us to become effective.
- (2) Should any individual provisions of these terms or parts of these be ineffective or void, this shall not affect the effectiveness of the remaining provisions. The contractual parties commit themselves to agreeing to a regulation that replaces the ineffective or void provision and that corresponds with its economic purpose to the greatest possible extent.