

Terms and Conditions of Sale, Delivery and Payment

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§ 1

General - Scope of application

- (1) Our terms and conditions of sale and delivery shall apply exclusively; contradictory terms and conditions of Orderer or such deviating from our terms and conditions of sale shall only be acknowledged if we expressly approve of their validity in writing. Our terms and conditions of sale shall also apply if we implement delivery to Orderer without reservations despite knowledge of contradictory terms and conditions of Orderer or such deviating from our terms and conditions of sale.
- (2) All agreements made between ourselves and Orderer for the purpose of performance of the present agreement have been recorded in this agreement in writing.
- (3) Our terms and conditions of sale and delivery shall only apply towards entrepreneurs within the meaning of § 310 sub-section 1 German Civil Code. Our terms and conditions of sale and delivery shall also apply for all future transactions with Orderer.

§ 2

Quotation - Quotation documents

- (1) If the order is to be qualified as a quotation pursuant to § 145 German Civil Code, we can accept it within 4 weeks.
- (2) We reserve ownership rights and copyrights to illustrations, drawings, calculations and other documents as well as samples. This shall also apply to written documents designated as being "confidential". Before forwarding them to third parties, Orderer shall require our express written approval.

§ 3

Prices - payment terms

- (1) If nothing to the contrary results from the order confirmation, our prices shall apply "ex works" excluding packaging; the latter shall be invoiced separately. We reserve the right to amend our prices adequately if increases or decreases in costs occur after conclusion of the contract, in particular on the basis of wage agreements or fluctuations of material prices. Upon request, we shall prove them to Orderer.
- (2) The statutory Value Added Tax is not included in our prices; it shall be stated separately on the invoice at the statutory amount on the date of invoicing.
- (3) If nothing to the contrary results from the order confirmation, the purchase price shall be due for payment net (without deduction) within 30 days of the date of invoice. If payment is received within 14 days of date of invoice, we shall grant 2% discount. The statutory rules with regard to the consequences of arrears in payment shall apply.
- (4) Rights of offsetting shall only accrue to Orderer if its counterclaims are legally effective, undisputed or have been acknowledged by us. A right of retention shall also be ruled out to this extent.

§ 4

Arrears in delivery - impossibility of performance

- (1) The start of the delivery period stated by us shall presuppose clarification of all technical questions.
- (2) Compliance with our obligation to delivery shall further presuppose punctual and proper fulfilment of Orderer's obligations. The right to defence of non-performance of contract remains reserved.
- (3) In the course of what can reasonably be expected of Orderer, we shall be entitled to part deliveries.
- (4) If Orderer falls into arrears in acceptance or culpably breaches other obligations to involvement, we shall be entitled to demand reimbursement of the damage incurred in this context, including all and any additional expenditure. Further claims shall remain reserved.
- (5) If the prerequisites of sub-section (4) have been fulfilled, risk of chance destruction or chance deterioration of the object of purchase shall pass to Orderer at the time at which it falls into arrears in acceptance or debtor's delay.
- (6) If we fall into arrears or if our obligation to perform is ruled out due to impossibility of performance pursuant to § 275 sub-section 1 German Civil Code or if we can reject performance pursuant to § 275 sub-section 2 and 3 German Civil Code, we shall only be liable according to § 7 of these terms and conditions of sale. In addition, for cases of simple negligence, a lump-sum limitation of liability to 0.5% per week of arrears, albeit no more than 5% of the value of the part of the delivery which cannot be used (or not be used contractually) as a result of the arrears shall apply.
- (7) The limitations of liability mentioned in sub-section (6) shall not be applicable for fixed transactions within the meaning of § 286 sub-section 2 no. 4 German Civil Code or of § 376 German Commercial Code.

§ 5 Passage of risk

- (1) If nothing to the contrary results from the order confirmation, delivery "ex works" shall be agreed.
- (2) Risk of chance destruction or of chance deterioration shall also pass to Orderer upon dispatch if we have assumed the costs of dispatch or other additional services or if part delivery is made.
- (3) If requested by Orderer, we shall cover the delivery with transport insurance; the costs incurred in this context shall be borne by Orderer.
- (4) Subject to contradictory statutory obligations, packaging shall not be taken back as a matter of principle. Orderer shall be obliged to ensure disposal of the packaging at its own cost. An exception shall be formed by pallets, stands and grid boxes, which remain in our possession.

§ 6 Claims from defects

- (1) Claims of Orderer from defects shall presuppose that the latter has properly complied with its obligations to examination and notification pursuant to § 377 German Commercial Code. The defects recognisable in an incoming check reasonably to be expected shall be notified to us notwithstanding the statutory obligations to examination and notification no later than 7 days after the receipt of the goods by Orderer. This shall be done in writing.
- (2) If special requirements of dimensional stability or compliance with specific shapes are required, this shall be expressly stated in the order and agreed. If not, slight deviations in dimension, shape and colour shall be deemed contractual.
- (3) If a defect in the object of purchase exists, we shall be entitled at our choice to subsequent performance in the form of a remedy of defects or to delivery of a new object free of defects. In the event of remedy of defects, we shall be obliged to bear all the expenditure necessary to remedy the defect, in particular transport, travel, working and material costs, insofar as these are not increased by the fact that the object of purchase has been taken to a place other than the place of performance.
- (4) If subsequent performance fails, the other statutory rights from defects shall accrue to Orderer. Claims to damages shall only accrue to Orderer pursuant to the provisions of § 7 of these terms and conditions of sale and delivery.
- (5) Claims of Orderer from defects shall be barred by limitation pursuant to the provisions of § 8 sub-section (1) of these terms and conditions of sale and delivery.

§ 7 Liability

- (1) We shall exclusively be liable for damage according to the following regulations:
- (2) We shall be liable according to statutory provisions insofar as Orderer makes claims for damages based on malice aforethought or gross negligence, including malice aforethought or gross negligence of our representatives or vicarious agents. Insofar as we are not charged with malice aforethought or grossly negligent breach of contract, the liability to damage shall be limited to the foreseeable damage typically occurring.
- (3) We shall be liable according to statutory provisions insofar as we culpably breach an essential contractual duty; but in this case, the liability to damage shall be limited to the foreseeable damage typically occurring.
- (4) Insofar as a claim to reimbursement of damage in lieu of performance accrues to Orderer, our liability shall also be limited within the scope of sub-section (3) to reimbursement of the foreseeable damage typically occurring.
- (5) Liability on account of culpable injury of life, limb or health shall remain unaffected: this shall also apply for mandatory liability according to the Product Liability Act and liability within the framework of a guarantee.
- (6) The aforementioned limitations of liability shall also apply insofar as Orderer demands reimbursement of vain expenditure instead of a claim to reimbursement of damage in lieu of performance.
- (7) Insofar as liability for damage towards us is ruled out or limited, this shall also apply with regard to the personal liability for damage of our employees, workers, fellow-workers, representatives and vicarious agents.

§ 8 Limitation

- (1) The period of barring by limitation for claims from defects shall be 12 months from the statutory start of barring by limitation.
- (2) For barring by limitation of other claims of Orderer not subject to the period of barring for claims from defects, a preclusive period of 18 months shall apply, starting from knowledge of the damage and of the identity of the damaging party.
- (3) The statutory periods of barring shall remain unaffected by the aforementioned regulations in the following cases:
 - in the event of recourse in delivery pursuant to §§ 478, 479 German Civil Code;
 - for the defects to buildings/building materials stated in §§ 438 sub-section 1 no. 2; 634a sub-section 1 no. 2 German Civil Code;
 - for damages from injury to life, limb and health;
 - for cases of malice aforethought or deceit or gross negligence by us, our legal representatives or vicarious agents;

- for the right of Orderer to withdraw from the contract in the event of a breach of duties for which we are answerable and not existing in a defect of the object of purchase of the work in question;
- for claims within the framework of a guarantee.

§ 9

Securing of retention of title

- (1) We reserve title to the object of purchase until receipt of all payments from the delivery contract. In the event of breach of contract by Orderer, in particular in arrears of payment, we shall be entitled to take the object of purchase back. Taking back the object of purchase by us shall represent withdrawal from the contract. After taking the object of purchase back, we shall be entitled to exploit it, the yield from exploitation being offset against Orderer's liability - deducting suitable costs of exploitation.
- (2) Orderer shall be obliged to treat the object of purchase carefully, in particular being obliged to insure it against fire, water and theft damage at the new value at its own expense. Insofar as maintenance and inspection work is necessary, Orderer must do the same in good time at its own expense.
- (3) In the event of seizures or other interventions by third parties, Orderer shall inform us in writing without delay so that we can sue pursuant to § 771 Code of Civil Proceedings. Insofar as the third party is not in a position to reimburse us for the judicial and extra-judicial costs of proceedings pursuant to § 771 Code of Civil Proceedings, Orderer shall be liable for the losses incurred by us.
- (4) Orderer shall be entitled to resell the object of purchase in the ordinary course of business; however, it here and now cedes us all claims to the amount of the final invoice amount (including VAT) of our claim accruing to it against its purchasers or third parties from the resale, regardless of whether the object of purchase has been sold without or following processing. Orderer shall remain entitled to collection of said claim even after the assignment. Our power to collect the claims ourselves shall remain unaffected. However, we engage not to collect the claim as long as Orderer complies with its obligations to payment from the collected income, does not fall into arrears of payment and in particular does not make an application for opening of settlement or insolvency proceedings or does not stop payments. But if this is the case, we can demand that Orderer notifies us of the claims assigned and their debtors, gives all the information necessary for collection, hands over the appropriate documents and notifies the debtors (third parties) of the assignment.
- (5) Processing or reforming of the object of purchase by Orderer shall always be done on our behalf. If the object of purchase is processed with other objects not belonging to us, we shall acquire co-ownership of the new object in the proportion of the value of the object of purchase (final invoice amount including VAT) to the other processed objects at the time of the processing. Apart from this, the same shall apply for the object resulting herefrom as for the conditional commodity.
- (6) If the object of purchase is inseparably combined with other objects not belonging to us, we shall acquire co-ownership of the new object in the proportion of the value of the object of purchase (final invoice amount including VAT) to the other processed objects at the time of the combination. If the combination is done in such a way that the object of Orderer is to be regarded as the main object, it shall be deemed agreed that Orderer transfers co-ownership to us pro rata. Orderer shall keep the sole or co-ownership occurring in this way on our behalf.
- (7) Orderer shall also assign us the claims incurred against a third party by the combination of the object of purchase with a real property in order to secure our claims against it.
- (8) We engage to release the securities accruing to us upon request by Orderer to the extent that the realisable value of our securities exceeds the claims to be secured by more than 10%, the selection of the securities to be released being at our discretion.

§ 10

Place of jurisdiction - place of performance

- (1) Insofar as Orderer is a merchant, our registered office in Altena (Westf.) shall be place of jurisdiction; however, we shall be entitled to sue Orderer at the court of its place of residence.
- (2) The present agreement shall be governed by the law of the Federal Republic of Germany; validity of UN purchase law shall be ruled out.
- (3) If nothing to the contrary results from the order confirmation, our registered office in Altena (Westf.) shall be the place of performance.

§ 11

Final provisions

- (1) If individual aforementioned provisions are or become ineffective, this shall not affect the effectivity of the remaining provisions. The ineffective provisions shall be replaced by provisions coming closest to the economic purpose of the contract, paying attention to the mutual interests.
- (2) All our previous terms and conditions of sale and delivery are hereby superseded.

Information pursuant to § 33 Federal Data Protection Act: Orderer's data are processed electronically.