

# General terms of sale, delivery and payment in the B2B sector



## Section 1 General – scope of application

- (1) Our conditions of sale apply exclusively; we shall not recognise the customer's terms and conditions which conflict with or deviate from our conditions of sale, unless we have explicitly confirmed their applicability in writing. Our conditions of sale also apply if we perform the delivery to the customer without reservation whilst being aware of the customer's conditions which conflict with or deviate from our conditions of sale.
- (2) All agreements made between us and the customer for the purpose of carrying out this contract are recorded in this contract.
- (3) A contract comes into existence only upon our acceptance (in writing or in text format) or upon delivery of the goods.
- (4) Our salespersons are not entitled to make oral ancillary agreements or give guarantees which go beyond the written contract.
- (5) Our conditions of sale only apply for entrepreneurs within the meaning of Section 310 Sub-section 1 BGB (Bürgerliches Gesetzbuch [Civil Code]).
- (6) We are released from the obligation to fulfil concluded contracts in the event of force majeure, cessation of operations, restriction of production, strikes, damage to production facilities, non-delivery or delayed delivery from suppliers, measures taken by public authorities and similar unforeseen events. The customer does not acquire compensation claims from this.

## Section 2 Offer – offer documents

- (1) Price offers and information on stocks and delivery dates are non-binding and revocable at any time, insofar as nothing to the contrary was agreed.
- (2) If the order is to be classified as an offer under Section 145 BGB we can accept this within 2 weeks.

## Article 3 Documents Provided

We reserve ownership rights and copyrights to all documents provided to the customer in connection with placement of the order, such as calculations, drawings, etc. Third parties may not be allowed access to these documents unless we give the customer our express written consent for this. Insofar as we do not accept the customer's offer within the period in Section 2, these documents are to be sent back to us immediately.

## Section 4 Prices – terms of payment

- (1) Unless otherwise provided in our confirmation of order, our prices are to be understood as being in euros (€) ex works, including loading at the factory, but exclusive of packaging, freight, transport, insurance, and customs duties.
- (2) The statutory VAT is not included in our prices; this is shown separately in the invoice in the respective applicable statutory amount on the date of invoicing.
- (3) Where there customer is in default of payment we are not obligated to deliver the goods ordered until all amounts in arrears have been paid in full. In such cases, and where there is a significant deterioration in the customer's creditworthiness, we are entitled to demand advance payments for deliveries not yet made. If the customer rejects this method of processing transactions, all of our claims against the customer become due for payment immediately.
- (4) A special written agreement is required to subtract discounts.

- (5) Unless otherwise provided in the order confirmation, the purchase price is due for payment net (without deduction) within 30 days of the invoice date. The statutory rules concerning the consequences of being in default of payment apply.
- (6) If no fixed price agreement was made, we reserve the right to make reasonable price changes due to changes in wage, material, and distribution costs for deliveries which take place 3 months or more after conclusion of the contract. The reasonableness of these can be reviewed by a court under Section 315 Sub-section 3 BGB.
- (7) The customer is only entitled to rights of set-off if their counterclaims are determined by law, are undisputed, or we have recognised them and they are in a close synallagmatic relationship to the customer's claim.
- (8) The customer is only authorised to exercise a right of retention insofar as their counterclaim is based on the same contractual relationship.

## Section 5 Scope of delivery, delivery time

- (1) Partial deliveries are permitted. Quantitative over or under-deliveries of +/- 2% of the agreed delivery quantity (weight tolerances) are customary in the trade and are therefore deemed to be in accordance with the agreement, with the effect that the customer cannot demand redemption or subsequent delivery. Such over or under-deliveries are not taken into account in the calculation.
- (2) Partial deliveries are permitted. Quantitative over or under-deliveries of +/- 2% of the agreed delivery quantity (weight tolerances) are customary in the trade and are therefore deemed to be in accordance with the agreement, with the effect that the customer cannot demand redemption or subsequent delivery. Such over or under-deliveries are not taken into account in the calculation.
- (3) If an agreed delivery period or a delivery date is missed by 2 weeks for reasons we are responsible for (if the goods left the place of performance then the period is deemed to have been complied with) the customer can rescind the contract after setting a grace period of a further 2 weeks.
- (4) Where there are framework agreements with individual orders without the time and extent of the individual orders being contractually agreed, the customer is obligated to order in approximately equal time intervals in approximately equal amounts and to pay after invoicing. If the customer does not comply with this obligation to order, despite a request to do so, and there is no contractual agreement on the consequences of ordering, we are entitled to invoice for the remaining amount, regardless of the order amounts still outstanding.
- (5) The start of the delivery time we have specified presupposes the clarification of all technical questions.
- (6) Compliance with our obligation to deliver further requires the timely and proper fulfilment of the customer's obligations. The defence that the contract has not been fulfilled is reserved.
- (7) If the customer is in default of acceptance or they culpably breach other duties to cooperate, we are entitled to demand to be compensated for any losses we incur, including any additional expenditure. This particularly includes the storage costs. Further claims or rights are reserved.
- (8) In the event of the customer's default of acceptance or payment we are entitled to rescind the contract after setting a deadline of 2 weeks.

- (9) Insofar as the prerequisites of Sub-section (7) are present, the risk of accidental loss or of an accidental deterioration of the purchased item shall pass to the customer at the time in which they enter into default of acceptance or default of debt.
- (10) We are liable under the statutory provisions insofar as the underlying contract of sale is a fixed transaction for the purposes of Section 286 Sub-section 2 No 4 BGB or of Section 376 HGB (Handelsgesetzbuch [Commercial Code]). We are also liable under the statutory provisions if, as a consequence of a delivery delay that we are responsible for, the customer is entitled to assert that their interest in continuation of the contract has ended.
- (11) We are further liable under the statutory provisions if the delivery delay is due to an intentional or grossly negligent breach of contract for which we are responsible; any fault on the part of our representatives or agents is to be allocated to us. If the delivery delay is due to a grossly negligent breach of contract for which we are responsible, our liability for compensation is limited to the foreseeable, typically-occurring losses.
- (12) We are also liable under the statutory provisions if the delivery delay is due to our culpable breach of a substantive contractual obligation; in this case, however, our liability for compensation is limited to the foreseeable, typically-occurring losses.
- (5) We are liable under the statutory provisions if the customer asserts claims for damages based on intent or gross negligence, including the intent or gross negligence of our representatives or vicarious agents. Insofar as we are not accused of intentional breach of contract the liability for compensation is limited to the foreseeable, typically-occurring losses.
- (6) We are liable under the statutory provisions if we culpably breach a substantial contractual obligation; in this case our liability for compensation is also limited to the foreseeable, typically-occurring losses.
- (7) Our liability for damages lapses if the goods are altered by third parties or combined with other goods, unless a defect reported by the customer was demonstrably not caused by this.
- (8) Costs we incur due to unjustified defect complaints, particularly travel expenses, are at the customer's expense.
- (9) This shall not affect liability for culpable injury to life, limb or health; this also applies for liability pursuant to the ProdHaftG (Produkthaftungsgesetz [Product Liability Act]).
- (10) Insofar as there is nothing to the contrary in the above, liability is excluded.
- (11) Warranty claims shall expire 12 months after delivery, calculated from the transfer of risk. This does not apply if the purchased item is normally used for construction and caused the defect.
- (12) The limitation period is unaffected in case of delivery recourse under Sections 478 and 479 BGB.

## Section 6 Transfer of risk – packaging costs

- (1) Unless otherwise specified in the order confirmation, the deliveries are agreed to be "ex works".
- (2) If the product is shipped to the customer at their request, the risk of accidental loss or accidental deterioration of the product passes to them with the shipment, at the latest when it leaves the factory/warehouse. This applies independently of whether the product is shipped from the place of performance or who bears the costs of freight.
- (3) Separate agreements apply for the return of the packaging.
- (4) Insofar as the customer requires it, we shall cover the delivery with an insurance policy; the customer shall bear the costs incurred in this respect.

## Section 7 Liability for defects

- (1) Any claims for defects on the part of the customer require them to have properly complied with their obligation to examine the goods and to notify defects in accordance with Section 377 HGB. For defects that are either apparent or noticeable on careful examination, complaints of defects must be made to us at the latest within 14 days of delivery of the goods to the destination point with a precise description. For latent defects, the customer must notify us of the defect immediately, at the latest 14 days after discovery, with a precise description.
- (2) If there is a defect in the purchased goods we are, at our choice, entitled to rectify the defect either by remedying it or by delivering a new, defect-free item. In the event of subsequent performance we only bear the necessary expenditure up to the purchase price.
- (3) The customer is to compensate for any necessary expenditure for the purposes of remedying the defect which arises from the item having been taken to a location other than the place of performance.
- (4) Should the subsequent performance fail, the customer is entitled, at their choice, to demand rescission or a price reduction. Failure of the subsequent performance is first to be assumed if we were, within a reasonable time, twice futilely granted sufficient opportunity for subsequent performance, if subsequent performance is impossible, if it is refused or unreasonably delayed by us, if there are reasonable doubts concerning the prospects of success or if subsequent performance is unreasonable for other reasons.

## Section 8 Total liability

- (1) Liability for compensation not mentioned in Section 7 is hereby excluded, irrespective of the legal nature of the asserted claim. This particularly applies for compensation claims arising from culpability upon concluding the contract, due to other breaches of obligations, or due to tort claims for damages in accordance with Section 823 BGB.
- (2) In cases of permissible limitations of liability for simple negligence, the reasonably-foreseeable losses typical for the contract are at most 5% of the order value (for work by external contractors see Section 9 Clause (1)). This limitation does not apply for injuries to life, limb and/or health.
- (3) The limitation under Sub-section (1) also applies if the customer, instead of demanding compensation of the losses, demands compensation for futile expenses.
- (4) Insofar as liability on our part for compensation is excluded or limited, this shall also apply to the personal liability of our employees, workers, collaborators, representatives and vicarious agents.

## Section 9 Work by external contractors

- (1) Where work is performed by external contractors our liability is limited to 5 times the order value of the present order.
- (2) Liability for consequential damages is excluded.
- (3) These limitations do not apply for intent and gross negligence, and for injury to life, limb and/or health.
- (4) Any parts or parties potentially at risk are to be carefully protected in advance by the client (e.g. with masks). However, we also accept no guarantees in case that such precaution is taken.
- (5) The limitation period for defect claims is one year. The period starts according to the statutory provisions.

## Section 10 Security of title retention

- (1) We reserve title to the purchased item until receipt of all payments from the business relationship. Where the customer behaves contrary to the contract, particularly in case of default of payment, we are entitled to take back the purchased item. If we take back the purchased item, we will be deemed to have rescinded the contract. After taking back the purchased item we are authorised to sell it, the proceeds of sales are to be credited to the customer's liabilities - minus reasonable costs of sale.
- (2) The customer is required to handle the purchased item with care, and shall in particular be required, at own cost, to insure this item to its replacement value against fire, water and theft. If maintenance and inspection work is necessary, the customer shall carry out such work promptly at their own expense.
- (3) In case of seizure or another form of intervention by third parties, the customer shall immediately notify us in writing so that we can file a suit under Section 771 ZPO (Zivilprozessordnung [Code of Civil Procedure]). If the third party is not in a position to reimburse us for the judicial and extra-judicial costs of a lawsuit incurred in accordance with Section 771 ZPO, the customer shall then be liable for the resulting shortfall.
- (4) The customer is entitled to resell the objects of sale in the ordinary course of business; however, they hereby assign to us all claims to the value of the final invoice amount (including VAT) that they have acquired against their customers or third parties as a result of the resale, and regardless of whether the goods have been resold without processing or after processing. The customer shall retain their authority to collect the debt even after the assignment. Our right to collect the claim ourselves remains unaffected. However, we undertake not to collect the debt whilst the customer meets their payment obligations from any revenues received, does not enter into default of payment, and there is, in particular, no application for insolvency proceedings or a settlement procedure, or there is a cessation of payments. However, if this is the case, we can request that the customer disclose the claims assigned and the debtor in question, provide all information required for collection, hand over the relevant documents, and notify the debtor (third parties) of the assignment.
- (5) The customer's processing or transformation of the purchased item is always performed for us. If the purchased item is processed alongside other items not belonging to us, we shall acquire joint ownership of the new objects in proportion to value of the purchased item (the final invoice amount, including VAT) to the value of the other objects at the time of processing. Items arising as a result of processing are subject to the same conditions as goods delivered subject to reservation.
- (6) If the purchased item is inseparably mixed with other items not belonging to us, we shall acquire joint ownership of the new objects in proportion to the value of the purchased item (the final invoice amount, including VAT) to the value of the other objects mixed at the time of mixing. If the mixing takes place such that the customer's object is to be seen as the main item, it is agreed that the customer transfers proportionate joint ownership to us. The customer holds the sole title or joint ownership which arises in this way on our behalf.
- (7) To secure our claims against them, the customer also assigns to us the claims against a third party which arise from the purchased item's connection to a property.
- (8) We shall undertake to release the securities that we hold upon the customer's request insofar as the realisable value of our securities exceeds the claims to be secured by more than 20%; the decision on the securities to be released shall be ours.
- (9) If retentions of title are not valid in a foreign state if its law applies, the customer is obligated to co-operate in all measures, in particular make all declarations necessary on their part, in order to provide securities equivalent to the retention of title.

## Section 11 Place of jurisdiction – place of performance

- (1) If the customer is a merchant, a legal person under public law or a public law special fund, or if at least one of the contracting parties has no general place of jurisdiction in Germany, the exclusive place of jurisdiction - including in summary proceedings based on documentary evidence, including bills of exchange - is our registered office; we are, however, also entitled to sue the customer at the court competent for their general place of jurisdiction.
- (2) The customer shall independently observe import and export provisions applicable to the deliveries or services, particularly those of the USA. The customer shall bear any customs duties, charges, and other fees for international deliveries or services. The customer shall independently process statutory or official procedures in connection with international deliveries or services, insofar as nothing to the contrary is expressly agreed.
- (3) The law of the Federal Republic of Germany applies exclusively; the UN Sales Convention shall not apply.
- (4) Unless otherwise stated on the order confirmation, our registered place of business is the place of performance.

Bad Friedrichshall, 18.01.2017