

General Terms and Conditions

- Sales Terms -

I. Applicability & validity

1.

Our Terms and Conditions are only valid for and applicable to entrepreneurs as defined in § 310 Abs. 1 BGB (German Civil Code); we do not accept or recognise any terms or conditions of a contract partner that deviate from our own terms – even if we are aware that any such terms or conditions exist – unless we have given our explicit written approval and acceptance thereof. Our own Terms and Conditions also apply in cases where we deliver goods or services to our contract partner without reservation even though we are aware of partner terms that deviate from our own.

Our Terms and Conditions shall apply to all existing and future business relationships, also including any that have not yet been explicitly agreed. These Terms and Conditions shall be considered accepted at the latest when goods and services are delivered, and any confirmation of delivery by the consignee that refers to his own terms and conditions is herewith deemed unacceptable.

2.

All agreements between us and our contract partner are in written form and are included in this contract.

II. Offer, conclusion of contract

1.

Our offers are without obligation and subject to change, unless they have explicitly been declared binding or they contain a reference to a limited acceptance period. If any order is to be qualified as an offer, we are entitled to accept it within two weeks.

2.

We reserve the right to make changes to designs, technical specifications, or descriptions set out in brochures, offers and other documents, to make changes to the scope, design and material of products in the course of technical improvements, and to change colours, forms and/or weights without notice, provided that these changes are within reason. Our product specifications (technical data, dimensions etc.) are approximate; they do not represent a binding specification unless we have given an explicit written guarantee to this effect.

3.

As a matter of principle, the product description is the only binding statement of the condition and nature of the goods.

Public statements, testimonials or advertising claims made either by us or by the manufacturer of the goods do not in any way constitute a binding statement of the condition or nature of the goods.

4.

If the customer receives a deficient set of assembly instructions, we are only obliged to deliver a set of assembly instructions without deficiencies, and this only in cases where the deficiency is such that the product cannot reasonably be assembled correctly.

5.

We reserve all copyright and other proprietary rights to samples, drawings, estimates etc., whether in printed or electronic form. They must not be disclosed or made available to third parties without consent and must be returned to us immediately on demand.

6.

The contract is concluded on the condition that we receive goods without deficiencies and in good time from our suppliers. This only applies, however, when we have concluded a corresponding cover guarantee agreement with our supplier, and are not ourselves responsible for any late delivery or deficiencies. Our contract partner will be notified without delay in the event of non-availability of goods or services from our suppliers. Any payment already made will be refunded without delay.

7.

Unless agreed otherwise, ownership of tools is not transferred to the customer, even in cases where he is invoiced in full for the cost of any such tools.

8.

As a matter of principle, samples are only delivered against appropriate payment.

III. Prices, price adjustments, payment etc.

1.

Prices are valid for the goods and services described in our order confirmations. Additional or special services will be invoiced separately. All prices are given in euro (€) ex-works and do not include packaging and the statutory rate of VAT; export deliveries will also be subject to customs duty and other local official fees, tolls etc.

2.

We reserve the right to make reasonable adjustments to our prices if costs increase or decrease after conclusion of the contract, especially in the event of variations in the cost of materials. We will provide our contract partners with suitable proof on demand.

3.

Unless agreed otherwise, we will allow 2% cash discount on payments made within 10 days of the date of invoice; in all other cases, our payment terms are 30 days net. Cheques and bills of exchange will only be accepted in lieu of payment by prior consent.

4.

Counterclaims by the customer or the withholding of payments on the grounds of such claims are only permitted when the counterclaims are undisputed, have been confirmed with legal effect or accepted on our part.

5.

We are entitled to deliver outstanding goods against advance payment or deposit of a collateral security if, after conclusion of the contract, circumstances come to our notice that are likely to significantly lower the customer's creditworthiness and put at risk the payment of outstanding invoices from the respective contractual relationship (including other individual orders from the same framework contract).

IV. Lead time, delayed delivery, call-off

1.

Deliveries will be ex-works.

2.

Our quoted delivery dates for goods and performance dates for services are always approximate, unless a firm deadline or date has been explicitly promised or agreed. If it has been agreed that goods will be forwarded as freight, delivery deadlines and dates refer to the point at which the goods are transferred to the haulage company, freight forwarder or other third party entrusted with transportation of the goods.

3.

The quoted lead time counts from the point when all technical questions have been fully clarified. In addition, the customer must fulfil his contractual obligations punctually and in due order.

4.

a)

In the event of any delay in fulfilment on the part of the customer, we are entitled – without affecting any other rights resulting from such a delay – to claim reasonable extension of our performance or delivery deadline, or postponement of performance or delivery date, by at least the same length of time as that by which the customer has delayed the fulfilment of his contractual obligations.

b)

We do not accept any liability for inability to deliver, or delivery delays, caused by force majeure or any other circumstances beyond our control that were unforeseen when the contract was concluded e.g. disruption to production, difficulties with the supply of raw material or energy, transport delays, strikes, lock-outs, shortage of staff, energy or raw materials, problems with obtaining the necessary official authorisation, or governmental decrees. If any such circumstances significantly impair, or wholly prevent, delivery of the goods or services and are not simply of a temporary nature, we are entitled to withdraw from the contract. In the case of delays of a temporary nature, delivery or performance deadlines and/or delivery or performance dates shall be postponed by a reasonable period (counting from the point at which the delay began, with the addition of an appropriate margin to allow the delivery or performance process to return to normal). If

the length or nature of the delay is such that the customer cannot reasonably be expected to accept late delivery of the goods or performance of the services, he may withdraw from the contract by giving us immediate written notification of his intention.

c)

We are entitled to make partial deliveries if

- the customer is able to make use of the partial delivery within the context of the contractually agreed intended purpose and
- delivery of the balance of the goods ordered can be guaranteed and
- the customer will not suffer any significant inconvenience or incur significantly higher costs as a result (unless we declare that we are willing to meet these costs)

d)

If we are in default on delivery of goods or services, or are unable to deliver at all, regardless of the reason for the delay or inability, our liability shall be limited to compensation according to the terms set out in the regulations under IX. below.

e)

If we are in default on call-off deliveries, call-offs must take place no later than six months after issue of the order confirmation unless agreed otherwise in writing. If the above-mentioned maximum period, or another agreed maximum period for call-off has expired, we are entitled to make deliveries and demand settlement of our invoice(s) independently of customer call-offs. In this case, our contract partner shall be obliged to accept delivery and settle the corresponding invoice(s).

V. Over-/ under-delivery

We would like to advise our contract partner that over- or under-deliveries of up to 10% are possible for technical reasons, and that such over- or under-deliveries do not represent a breach of contractual obligations on our part. The basis for our invoice and the payment due is the quantity that is actually delivered to the customer.

VI. Shipment, packaging, transfer of risk, acceptance

1.

The choice of shipment method and type of packaging shall be at our discretion.

2.

Insurance cover, irrespective of its nature or purpose, will only be arranged if explicitly requested by the customer, and shall be entirely at his expense.

3.

Shipment risk is transferred to the customer as soon as the goods are delivered to i.e. loaded by the haulage contractor, forwarder or other third party entrusted with transporting the consignment. This also applies in the case of partial deliveries, or when we have agreed to perform other services. If shipment or loading is delayed due to circumstances for which the customer is responsible, the risk is transferred to the customer from the day on which we inform the customer that we are ready to ship the goods.

4.

The customer is responsible for meeting warehousing or storage costs after risk has been transferred. If goods are stored on our premises or on our behalf, the monthly storage charge shall be € 20 per Euro pallet space. We reserve the right to charge higher storage rates if necessary, on production of suitable proofs.

VII. Warranty

1.

The warranty period shall be 12 months after delivery or, in cases where acceptance is required, after acceptance. When used commodities are sold, no warranty or liability shall be attached to the sale, unless a claim is made on our part on the grounds of injury to life, limb or health, or wilful intent or gross negligence.

2.

Customer claims on the grounds of defects are only admissible if the customer has fulfilled all requirements and obligations concerning inspection of goods and lodging of claims, as described and specified in § 377 HGB (German Code of Commercial Law).

3.

The article or goods claimed to be defective must be returned to us free of charge on request. In the event of a justified claim for defective goods, we will refund the cost of the most economical shipment method; this will not apply if costs are higher as a result of the delivered goods being at a location other than that at which they would normally be when used for their intended purpose.

4.

If the goods delivered are found to contain material defects, we are obliged and entitled to choose – within a reasonable time period - between removing the defect and supplying replacement goods. If we subsequently fail to remove the defect or supply replacement goods, or if removal of the defect or replacement of goods is impossible or unreasonable, or the customer is expected to wait for removal or replacement for an unreasonable length of time, the customer may withdraw from the contract or pay an appropriately lower price.

5.

If a defect results from a fault on our part, the customer may demand compensation according to the terms set out in the regulations under IX. below.

6.

The warranty becomes invalid if the customer, without obtaining our prior permission, alters the delivered goods or engages a third party to alter them and thereby makes it impossible or unreasonably difficult to remove the defect. In any case, the customer shall meet the additional costs of defect removal resulting from such alterations.

7.

If, in exceptional cases, delivery of used goods is arranged with the customer, no warranty whatsoever shall be attached to them.

VIII. Copyright and property rights

1.

Both parties to the contract undertake to notify the other party – in writing and without delay – if legal action is taken against them for infringement of third party copyright or other property rights.

2.

If we produce goods at the request and to the specification of the customer, or perform services according to his instructions, he shall undertake to indemnify us against any claims or legal action on the grounds of infringement of third-party property rights.

IX. Liability – compensation for damages

1.

Our liability for compensation, for any legal reason whatsoever, and in particular on the grounds of inability, default, defective or wrong delivery, breach of contract, breach of duty during contract negotiations and unlawful action is, inasmuch as it is a question of fault in the respective cases, limited to the extent set out in this Section (IX).

2.

We are not liable

a)

in cases of simple negligence by our agents, legal representatives, employees or other vicarious agents or subcontractors,

b)

in cases of gross negligence by an employee below management level or by other vicarious agents, insofar as no breach of a duty that is fundamental to the contract is involved. The breach of a duty fundamental to the contract occurs in cases where the contract partner expects, and is reasonably entitled to expect, this duty to be performed.

3.

Insofar as we are liable to pay compensation for the reasons set out in paragraph 2 above, our liability is limited to generally accepted, foreseeable and characteristic loss or damage. Moreover, we are only obliged to pay compensation for indirect, collateral or

consequential loss or damage attributable to defective goods when such typical loss or damage can be expected as a result of using the goods for their intended purpose. If we are liable in the event of delayed delivery, our liability shall be limited to 3% of the value of the delivery per fully elapsed week, but shall not exceed 15% of the total value of the delivery.

4.

In the event of liability for simple negligence, our liability per individual case of damage to property or personal injury is limited to 50% of the net value of the goods that caused the damage or injury; this also applies when a breach of a duty fundamental to the contract occurs.

5.

The above exemptions from liability and limitations also apply to our agents, legal representatives, employees or other vicarious agents or subcontractors.

6.

Insofar as we provide technical advice, or are consulted on technical matters, and this advice or consultation do not constitute part of the obligations called for and agreed in the contract, they shall be provided free of charge and entirely exempt from any liability.

7.

The restrictions contained in the present regulations under IX. do not apply to our and our vicarious agents' liability in the case of wilful intent, guaranteed characteristics or features, damage to life, limb or health, or within the context of the Product Liability Act.

X. Retention of title

1.

Within the framework of contracts, we retain title to the goods until all outstanding invoices arising from the current business relationship have been settled. We also retain title to the goods until we have received all outstanding payments from an existing current account with our contract partner.

The retention is applicable to the agreed and accepted balance.

2.

Processing or transformation of the goods delivered will always be carried out for us by the customer. If the goods are processed or combined with other items not in our possession, we shall become part-owners of the new combination; our ownership share shall be equivalent to the ratio of the value of our goods (final invoice amount including VAT) to the value of the other processed items at the time of processing. Otherwise the same rules apply to the items produced by such combination as to goods delivered conditionally.

3.

If the goods delivered are processed so that they are irreversibly intermingled with other items not in our possession, we shall become part-owners of the new items; our ownership share shall be equivalent to the ratio of the purchased goods (final invoice

amount including VAT) to the value of the other intermingled items at the time of processing. If the intermingling is such that the customer's property can be regarded as the principal component, it is agreed that the customer shall assign us part-ownership. Our contract partner shall be responsible for safekeeping of any property solely or partly in our possession.

4.

The customer is entitled to resell the purchased goods to third parties in the course of normal business. He does, however, assign to us all outstanding receivables to the value stated on the invoice (including VAT) that result from selling the goods to a third party. We hereby accept the assignment. Following this assignment, the entrepreneur is entitled to collect outstanding amounts in our name until this right is revoked or until he ceases making payments or until an application to open insolvency proceedings is submitted.

If the entrepreneur defaults on payment, or if payments and/or trading cease, and if an application to open insolvency proceedings is filed, we are entitled to demand that the contract partner notify us of all claims assigned to us, and disclose the identity of the respective debtors; he furthermore undertakes to notify us of all details necessary for collection, to surrender the related documents and inform the debtors (third parties) of the assignment. This does not affect our right to disclose the assignment in such cases and collect the debts ourselves.

Claims that the entrepreneur has assigned to us in the manner described above cannot be assigned to third parties. Similarly, assignment as security is not permitted in the case of pledges.

5.

The contract partner is obliged to treat property of which we are sole or part owner with all due care and attention. He must arrange for regular servicing and maintenance to be carried out at his own expense.

6.

The contract partner is obliged to notify us immediately if third parties attempt to gain access to property of which we are sole or part owner, for example in the event of attachment. The same applies if the goods are damaged or destroyed. The contract partner must also notify us immediately of any change in ownership of the goods, or change of address.

7.

If the contract partner is in breach of his contractual obligations, as set out in paragraphs 5 and 6 above, we are entitled to reclaim the goods from him; if the contract partner is an entrepreneur, this will also apply even when we do not withdraw from the contract at the same time. Reclaiming the goods does not constitute a withdrawal from the contract on our part in cases where the contract partner is an entrepreneur, unless we have explicitly declared it otherwise in writing. The above clauses 1 and 2 also apply accordingly when the contract partner ceases trading or ceases to make payments or in the course of proceedings for insolvency, conditional upon the rights of an insolvency administrator. After reclaiming the goods, we have the right to dispose of them as we see fit. Proceeds from the sale or disposal of the goods shall be offset against the contract partner's outstanding liabilities, after deduction of reasonable costs for handling the sale or disposal.

8.

We undertake to release collateral securities deposited in our favour – if requested to do so by the contract partner - insofar as the negotiable value of the sureties exceeds the value of the outstanding demands by more than 10%; we are at liberty to stipulate which securities will be released.

XI. Final provisions

1.

The place of performance is our business address, unless agreed otherwise.

2.

The relations between the customer and us are governed solely by the current applicable law of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980 shall be inapplicable.

3.

The sole legal domicile shall be our place of business. This also applies when the contract partner does not have his general venue in Germany, or his usual place of temporary or permanent residence is unknown at the time the claim is filed. We are, however, entitled to bring an action at the customer's place of business. Legal provisions governing exclusive legal domiciles are not affected.

4.

We hereby draw the attention of the customer to the fact that we store data arising from and connected with the contract as described in § 28, German Data Privacy Act (Bundesdatenschutzgesetz) for data processing purposes; we also reserve the right to communicate the data to third parties when this is appropriate and necessary for the fulfilment of contractual obligations.

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