

## Terms of Delivery

### § 1 General - Scope

1. The following conditions of sale and delivery apply exclusively; Any terms and conditions of the customer that conflict with or deviate from these conditions of sale will not be accepted unless the supplier has expressly agreed to their validity in writing. The following terms and conditions of sale and delivery also apply if the supplier delivers unconditionally in the knowledge of conflicting or deviating terms and conditions of the customer.
2. All agreements made between the supplier and the customer for the purpose of executing this contract shall be set out in writing in this contract.
3. Supplements, amendments or subsidiary agreements must be confirmed in writing by the supplier to be effective.
4. The offers of the supplier are non-binding. The orders placed shall become binding only upon written confirmation (also invoice or delivery note) of the supplier. The orderer is bound to the order for four weeks, for existing delivery items two weeks.
5. The supplier reserves ownership of cost estimates, drawings and other documents. They may not be made accessible to third parties.
6. The following terms of sale and delivery also apply to all future transactions with the customer.
7. Only the law applicable in the Federal Republic of Germany applies.
8. The application of the unified Laws on the International Sale of Goods and on the Conclusion of International Sale Contracts for Goods - both of 17 July 1973 - and the UN Sales Convention of 11 April 1980 is excluded.
9. Commercially available clauses are to be interpreted according to the respectively valid Incoterms.
10. If it has been agreed that the seller bears customs and import duties of the country of destination, increments of such duties which come into effect between the delivery of the order confirmation and the delivery of the goods shall be borne by the buyer. All other fees, taxes and costs associated with the sales contract shall also be borne by the buyer.
11. For the assignment of claims the customer requires the consent of the supplier.

### § 2 Scope of the delivery obligation

1. For the scope of delivery, the written order confirmation by the supplier shall prevail.
2. Information about weight, performance, consumption, operating costs, illustrations, drawings, color, application technology, dimensions, etc. are, unless expressly designated as binding, only approximately authoritative and no guarantee for the existence of a property. Guaranteed are only properties that have been expressly stated in writing as guaranteed.
3. Reasonable partial deliveries as well as reasonable deviations from the order - if the goods are specially made or imported for the customer - are permissible.

### § 3 Changed circumstances

If, after conclusion of the contract, e.g. through the suspension of payments, application for commencement of settlement or insolvency proceedings, liquidation or surrender of securities, bills of exchange or other comparable circumstances, legitimate doubts arise as to the solvency and creditworthiness of the customer, the supplier is entitled, at his discretion, to demand advance payment of the order amount or other security or to withdraw from the contract and claim damages instead of the performance, without the customer being able to derive any claims there from.

### § 4 Prices and Payments

1. Unless otherwise agreed, the prices are ex business of the supplier, excluding packaging; this will be charged separately.
2. The statutory VAT is not included in the prices of the supplier; it will be shown separately in the statutory amount on

the invoice date.

3. The deduction of discount requires special written agreement.
4. Unless otherwise stated in the order confirmation, the purchase price is due net (without deductions) within 30 days of the invoice date. If the customer is in default of payment, the supplier is entitled to default interest in the amount of 5% above the base rate according to § 1 of the Discount Rate Reconciliation Act of 9 June 1998 p. a. to promote. If the supplier is able to prove a higher damage caused by default, he is entitled to assert this. However, the purchaser is entitled to prove to the supplier that the supplier suffered no or substantially less damage as a result of the delay in payment.
5. Bills of exchange or checks are only accepted after special agreement on account of payment and subject to the discounting ability. The value date is the day on which the equivalent value is available. Discount charges, stamp duty and collection fees shall be borne by the customer and are due immediately in cash.
6. The Purchaser shall only be entitled to offsetting rights if his counterclaims have been legally established, are undisputed or have been acknowledged by the Supplier. In addition, the purchaser is only authorized to exercise a right of retention insofar as his counterclaim is based on the same contractual relationship.
7. The prices of the supplier valid at the time of delivery shall be calculated, in particular in the case of long-term delivery contracts (continuing obligations).
8. The weight determination relevant for the calculation shall be made at the place of delivery of the supplier.
9. The Supplier reserves the right to change its prices appropriately if cost reductions or cost increases occur after conclusion of the contract, in particular due to collective bargaining agreements, material price increases or changes in currency parities. The supplier will prove this to the customer on request.
10. The packaging material and means of transport provided by the supplier on loan shall be returned four weeks after consumption of the goods, but at the latest eight months after delivery at the expense of the customer.

### § 5 Delivery time

1. The delivery period begins with the date on which the supplier has confirmed the purchase contract. The delivery period is deemed to have been adhered to if the delivery item has left the supplier's or manufacturer's premises until delivery has expired or has been made available for delivery by acceptance or dispatch and this circumstance is indicated to the customer.
2. Compliance with the delivery period requires the timely and proper fulfillment of the obligations of the customer.
3. The delivery period shall be extended appropriately in the event of industrial action (strikes and lockouts) and in the event of unforeseen events for which the supplier is not responsible (unpredictable breakdowns, unavoidable scarcity of raw materials or materials, etc.) or in case of unforeseeable obstacles for which the manufacturer is responsible is. The supplier must notify the customer of the beginning and end of such events.
4. Insofar as the Supplier is unable or significantly impeded the performance of the service for the reasons specified in paragraph 3, he is entitled to withdraw from the contract.
5. If the supplier is in default for reasons for which he is responsible, the claim for damages instead of performance and the compensation for damages caused by default in the case of ordinary negligence are excluded.
6. a) If the purchaser sets a reasonable deadline for delivery after the supplier is in default, he is entitled, after fruitless expiry of this period, to withdraw from the contract and / or claim damages instead of performance. Compensation instead of the performance and / or compensation of the delay damage in the amount of the foreseeable damage can only be demanded by

the purchaser if the damage and / or the delay were based on intent or gross negligence.

b) In any case, the claim for damages instead of the delivery in case of slight negligence to 25% of the agreed purchase price and the right to compensation for the delay damage to 5% of the agreed purchase price is limited. The supplier is not liable if the damage would have occurred even if timely delivery.

7. The liability limits acc. Paragraphs 5 and 6 do not apply if a commercial fixed business has been agreed; the same applies if the purchaser can assert that his interest in the fulfillment of the contract has ceased because of the supplier's fault.

8. If the purchaser is in default of acceptance or if he violates other obligations to co-operate, the supplier is entitled to demand compensation for the resulting damage, including any additional expenses. In this case, the risk of accidental loss or accidental deterioration of the purchased item at the time of the buyer on, by this comes into default of acceptance.

9. In the case of default of acceptance, the supplier can claim compensation for 25% of the agreed purchase price without special proof, unless the customer proves that no or substantially less damage has occurred.

10. The supplier reserves the right to change the design and shape of the delivery item during the delivery period, provided that the delivery item does not undergo a fundamental change and the change is reasonable for the orderer.

#### **§ 6 Transfer of risk**

1. Unless otherwise agreed, delivery shall be made ex works of the supplier or factory of the manufacturer, either by acceptance or by shipment. With the handing over of the delivery item to the forwarding agent, carrier or collector or during transport with means of transport of the supplier, but at the latest when leaving the warehouse of the supplier or the manufacturer, the risk is transferred to the customer.

2. Transport and all other packaging in accordance with the packaging regulations are not taken back; except pallets and loaned packaging. The customer is obliged to dispose of the packaging at his own expense.

#### **§ 7 Retention of title**

1. The Supplier retains title to the purchased item until receipt of all payments, in particular all purchase price payments including all ancillary claims (e.g. bill of exchange costs, financing costs, interest, etc.) resulting from the business relationship with the Purchaser.

2. The retention of title also remains valid if individual claims of the supplier are included in a current invoice and the balance is drawn and acknowledged.

3. In case of breach of contract by the purchaser, in particular default in payment, the supplier is entitled to take back the goods. The taking back of the purchased item by the supplier does not constitute a withdrawal from the contract, unless the supplier has expressly stated this in writing. The supplier is entitled to the recovery of the goods for their recovery, as far as he has announced the purchaser the recovery with a reasonable period. The realization proceeds are to be credited to the liability of the purchaser - less reasonable exploitation costs.

4. If the supplier withdraws from the contract, he may demand compensation for the duration of the delivery of the used goods, which is calculated in accordance with § 13 (2) of the Consumer Credit Law (Verbraucherkreditgesetz)

5. In the case of the processing of the reserved goods, the purchaser acts for the supplier, without, however, acquiring any claims for the processing against the supplier. The supplier's reserved property therefore also extends to the processing resulting products. If the goods subject to retention of title are processed together with goods that are the property of third parties, or if the reserved goods are mixed or combined with goods that are the property of third parties, the supplier acquires co-ownership of the resulting products in proportion to the invoice value of the goods in the ownership Third-party goods. If the connection or mixing with a main item of the

purchaser, the purchaser hereby assigns his ownership rights to the new object to the supplier.

6. The purchaser is obliged to keep the goods subject to retention of title for the supplier carefully, to maintain and repair them at his own expense, as well as to be demanded by a careful merchant at his own expense against loss and damage, especially against fire, water - and theft damage sufficient to insure new value. He hereby assigns his claims under the insurance contracts to the supplier in advance.

7. The purchaser is entitled to dispose of the reserved goods in the ordinary course of business, but this does not apply if and insofar as a prohibition on the purchase price has been agreed between the purchaser and his customers. For pledges, security assignments or other charges, the purchaser is not authorized. In the case of resale, the customer has to make the transfer of ownership dependent on the full payment of the goods by his customers.

8. The purchaser hereby assigns all claims resulting from a resale of the reserved goods with all incidental and security rights, including exchanges and checks, in advance to secure all claims against the purchaser against the purchaser arising from the business relationship. If the purchaser accepts his claim in a current account relationship with his customers, he thereby also assigns to the supplier the current account balance, which is formed at the end of the accounting period, in advance to secure all claims against the purchaser arising from the business relationship Supplier off. If reserved goods are sold together with other items at a total price, the assignment is limited to the pro rata amount of the supplier's invoice for the goods sold with the reserved goods. If goods are sold on which the Supplier has a co-ownership in accordance with clause 5 above, the assignment is limited to the part of the claim that corresponds to the co-ownership share of the Supplier. If the customer uses the goods subject to retention of title for the property owned by a third party, he hereby assigns his claim for remuneration against the third party to the supplier in advance for the afore mentioned security purpose. As long as the customer meets his payment obligations in due time, he is entitled to collect the claims from a resale or a refinement himself. The authority of the supplier to collect the claim itself remains unaffected.

However, the supplier undertakes not to collect the claim as long as the customer meets his payment obligations from the proceeds received, does not default on payment and, in particular, has not filed an application for insolvency or settlement proceedings, or has ceased payments. However, if this is the case or if the supplier appears to be at risk of realizing his claims, the supplier may demand that the purchaser notifies the supplier of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors ( Third party) notifies the assignment.

9. In the event of attachment or other encroachments by third parties, the purchaser must notify the supplier immediately in writing so that the supplier can bring an action pursuant to § 771 ZPO. Insofar as the third party is not in a position to reimburse the supplier for the court and out-of-court costs of a claim in accordance with § 771 ZPO, the customer is liable for the loss incurred by the supplier.

10. The supplier undertakes to release the securities to which he is entitled on request of the customer to the extent that the realizable value of these securities exceeds the claims to be secured by more than 20%; the selection of the securities to be released is the responsibility of the supplier.

#### **§ 8 Warranty for defects**

1. The warranty rights of the purchaser presuppose that the purchaser has duly fulfilled his duties of inspection and complaint according to §§ 377, 378 HGB.

2. Insofar as there is a defect in the purchased goods for which the supplier is responsible, the purchaser may, at his discretion, demand remedy of the defect or the delivery of a defect-free delivery item. In the event of a defect removal, the supplier is

obliged to bear all expenses necessary for the removal of the defect, in particular transport, travel, labor and material costs, insofar as these are not increased by the fact that the goods were moved to a place other than the place of performance. The supplier can refuse the type of supplementary performance granted by the customer if it is only possible with disproportionate costs. In particular, the value of the item in immaculate condition, the importance of the defect and the question to consider whether the other type of remedy could be used without significant disadvantage for the purchaser. The claim of the customer is limited in this case to the other type of supplementary performance; the supplier's right to refuse these under the conditions of sentence 3 remains unaffected. If the supplier delivers a defect-free item for the purpose of supplementary performance, he may demand from the buyer that the defective item be returned in accordance with § 346 to § 348 BGB (German Civil Code).

3. No liability is assumed for damages due to natural wear and tear.

4. There is no guarantee for damages that have arisen for the following reasons:

- a) unsuitable and / or improper use, faulty installation or commissioning by the purchaser or third parties;
  - b) in the case of faulty or negligent handling of the delivery item, in particular with regard to the present operating and maintenance instructions;
  - c) excessive stress;
  - d) in the event of the use of unsuitable equipment and replacement materials, or the object of purchase previously in an operation that was not recognized by the manufacturer for the customer, was improperly repaired, maintained or maintained and the buyer had to recognize this;
  - e) parts have been incorporated in the object of purchase whose use the manufacturer / importer has not approved or the object of purchase has been altered in a manner not approved by the manufacturer / importer;
  - f) the customer has not indicated an error or has had it recorded;
  - g) the customer has not promptly given opportunity for supplementary performance in spite of a request.
5. In order to undertake all repairs and deliveries of spare parts deemed necessary by the Supplier at its reasonable discretion, the Purchaser shall, after agreement with the Supplier, give the necessary time and opportunity; otherwise the supplier is released from the supplementary performance. The purchaser has the right to have the defect rectified itself or by a third party, and replacement of his or her by the supplier, only in urgent cases of the danger to operational safety of which the supplier is to be informed immediately or if the supplier is in arrears to charge costs.

6. For the replacement part and the repair is guaranteed only in the manner as for the delivery item. The period for limitation of claims for defects in the delivery item shall be extended by the duration of the interruption of business caused by the supplementary performance work.

7. Any changes or repairs carried out improperly, for example by the purchaser or third parties, without the prior approval of the supplier, shall release the liability for the consequences arising therefrom.

8. If the supplier is not willing or unable to remedy the defect, in particular if it is delayed beyond reasonable deadlines for reasons for which the supplier is responsible or if the subsequent performance fails in any other way, the customer is entitled to choose to withdraw from the contract or to reduce the purchase price accordingly.

9. Unless otherwise stated below, further claims of the purchaser - for whatever legal reasons - are excluded. The supplier is therefore not liable for damages that did not occur on the delivery item itself; In particular, the supplier is not liable for lost profits or other pecuniary losses of the customer.

10. The above disclaimer of liability does not apply to bodily injury based on breaches of duty for which the supplier, a legal representative or a vicarious agent is responsible, or insofar as

the cause of the damage is based on intent or gross negligence. It also does not apply if the supplier has fraudulently concealed the defect or provided a guarantee for the existence of a property. In any case, the obligation to pay compensation is limited to the foreseeable damage.

11. Insofar as the supplier negligently violates a cardinal obligation or an essential contractual duty, his obligation to indemnify is in any case also limited to the contractually typical, foreseeable damage.

12. The warranty period for new delivery items is 12 months, calculated from the transfer of risk. This period is a limitation period and also applies to all other claims of the purchaser, as far as no claims made in tort become.

13. Used items are sold as inspected, to the exclusion of any warranty.

### **§ 9 total liability**

1. Insofar as our liability for damages is excluded or limited in accordance with § 8 (9) to (12), this shall also apply to all other claims without regard to the legal nature of the asserted claim, but in particular for claims based on fault

at conclusion of contract, violation of secondary obligations, in particular for claims from the producer liability acc. § 823 Civil Code.

2. The regulation acc. Paragraph 1 is only valid for claims acc. §§ 1 and 4 Product Liability Act as well as for all cases of inability or impossibility.

3. Insofar as our liability is excluded or limited, this also applies to the personal liability of our employees, employees, employees, representatives and vicarious agents.

4. The limitation period of claims between supplier and customer is governed by § 8 para. 12, unless claims arising from the producer's liability acc. §§ 823 ff. BGB in question.

### **§ 10 Technical advice, use and processing**

The technical advice of the seller in word, writing and by experiments are made to the best of our knowledge, however, is only a non-binding note, including in relation to any property rights of third parties, and does not exempt the buyer from the own examination of the products supplied by the seller on their suitability for the intended procedures and purposes.

Application, use and processing of the products are beyond the control of the seller and are therefore the sole responsibility of the buyer.

#### **§ 11 Jurisdiction - Place of performance**

1. If the purchaser is a registered trader, a legal entity under public law or a special estate under public law, the place of jurisdiction is Osnabrück, but the supplier is entitled to sue the purchaser at his place of residence. If the customer relocates his domicile or habitual abode from the scope of the Federal Republic of Germany after the conclusion of the contract, the place of jurisdiction is the place of business of the supplier. This also applies if the place of residence or habitual residence of the customer is not known at the time the complaint is filed.

2. Unless otherwise stated in the order confirmation, the place of performance is Bramsche.