

General Conditions of Sale and Delivery

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§ 1 General; Scope of Application

- (1) The following general conditions of sale and delivery apply exclusively. We will not recognise any conflicting or deviating conditions of the customer. Our conditions will also be valid if we deliver while being aware of any conflicting or deviating conditions of the customer.
- (2) Additions to or amendments of a contract will be valid only if in writing. This applies also with regard to this requirement for the written form.
- (3) Our general conditions of sale and delivery apply only to entrepreneurs within the meaning of § 14 of the German Civil Code [BGB], legal persons under public law and special funds governed by public law.
- (4) Our general conditions of sale and delivery apply also to all future transactions with the customer.

§ 2 Deliveries; Delivery Times

- (1) The scope and contents of a delivery to be made will be as stated in our order confirmation.
- (2) The specified delivery time commences when all technical issues have been resolved. Compliance with agreed delivery times is also conditional on the customer's prompt and proper compliance with his obligations.
- (3) Any cases of *force majeure* which, pursuant to § 276 of the German Civil Code, are beyond our sphere of responsibility will relieve us from the duty to fulfil our contractual requirements during such time as the *force majeure* persists. We will inform the customer without delay and in writing if any such event occurs and, on request, will reimburse the customer for any amounts already paid. We are entitled to withdraw from the contract if such an event persists for longer than three (3) months.
- (4) Events as referred to above will also allow the customer to be released from his liabilities in this respect, insofar as they occur within the customer's sphere of control and organisation.
- (5) Unless agreed otherwise in writing, deliveries will be made "Free Carrier" (FCA). Unless agreed otherwise in writing, the place of delivery is our business premises. The Incoterms (published by the International Chamber of Commerce, ICC) applying at the time of the contract being entered into will be decisive for the purposes of interpreting these delivery conditions.

The risk of accidental loss or accidental degradation of the delivery will transfer to the customer when the delivery leaves our business premises if, at the customer's request, we perform the order or have it performed at the customer's place of business or another place. If the customer has arranged transport insurance, the customer hereby assigns to us all rights to claim compensation under the policy as collateral. We hereby accept the assignment.

§ 3 Delay in Delivery; Delay in Acceptance

- (1) If we delay in delivery or fail to comply with an appropriate grace period set by the customer, the customer is entitled to claim compensation in the amount of 1% of the value of the delivery for each full week of delay, subject to a maximum of 5% of the value of the delivery as lump-sum compensation.
- (2) This limitation on liability pursuant to para. (1) does not apply insofar as the delivery agreed between the customer and us is a transaction on fixed terms pursuant to § 376 of the German Commercial Code [*HGB*] or if, as a result of the delay attributable to us, the customer no longer has an interest in timely delivery. This limitation on liability pursuant to para. (1) also does not apply if the delay in delivery is the result of our culpably failing to fulfil an essential contractual obligation. In addition, the provisions of para. (1) do not apply if the delay in delivery is the result of circumstances precipitated intentionally or through gross negligence by us, our representatives or agents.
- (3) Insofar as the limitation on liability under para. (1) does not apply, the liability for compensation – except in the event of intent on our part – will be limited to the foreseeable and typically accruing loss or damage.
- (4) If the customer delays in accepting delivery or fails to comply with any other obligation to cooperate, we will be entitled to demand compensation for any loss or damage thus arising, including any additional expenditure incurred. All other rights are reserved.
- (5) As soon as the customer delays in accepting the delivery, the risk of accidental loss or accidental degradation of the delivery transfers to the customer; we are obliged, however, to arrange for the delivery to be properly safeguarded at the customer's expense.

§ 4 Prices; Payment Terms

- (1) Unless agreed otherwise, prices are all stated FCA net.
- (2) The customer must make all payments in accordance with the specifications of the order confirmation. Unless agreed otherwise, our invoices fall due eight (8) days after the invoice date. No discount for prompt payment may be deducted without specific agreement.
- (3) The customer is entitled to rights of set-off and rights of retention only if the customer's counterclaim is established in law, undisputed and recognised by us.

- (4) If the customer is late in making payment, we are entitled to charge interest of eight (8) percentage points above the basic rate of interest specified in § 247 of the German Civil Code as compensation for the delay. The compensation may be set at a higher level if we prove the loss or damage caused by the delay to exceed the amount referred to above.

§ 5 Liability for Defects

- (1) The customer must inspect deliveries immediately in accordance with § 377 of the German Commercial Code and must report any complaints or defects.
- (2) Para. (1) above applies also if quantities delivered exceed or are less than what was ordered and in respect of any incorrect deliveries.
- (3) If a defect is established and promptly notified to us, we are entitled, at our discretion, either to remedy the defect within an appropriate period of time or to supply a new item free of defects. We will bear any costs involved in such subsequent fulfilment.
If the subsequent fulfilment fails or cannot reasonably be expected of the customer, the customer may withdraw from the contract, providing the breach of duty is not insignificant, or may demand a reduction in the price agreed. The customer may also demand compensation instead of fulfilment of the contract, unless the limitation of liability provisions set out in paras. (5) to (9) apply.
- (4) A limitation period of one year applies with regard to complaints relating to newly produced items. Liability for defects is excluded in the case of items offered as used. If we are required, because of a defect, to take back newly produced items supplied to us by the supplier or if the purchase price charged to us has been reduced because of a defect, a limitation period of five years, starting from the date on which the item was delivered (recourse of the entrepreneur under § 478 of the German Civil Code) will apply to our claims. The provisions of § 5 paras. (6) to (9) apply accordingly with regard to the limitation of our liability.
- (5) Without prejudice to the provisions in § 5 paras. (6) to (9) below we will not be liable to pay compensation.
- (6) We will be liable in accordance with the statutory provisions insofar as we have given any warranty of the condition of an item.
- (7) In the event of damage caused intentionally or through gross negligence, we will be liable in accordance with the statutory provisions. This applies also with regard to damage arising from simple negligence, to the extent that a contractual duty has been breached. The statutory provisions also apply to liability for compensation instead of performance in the event of a serious breach of duty. In all the above cases – except in the event of intentional action on our part – liability is, however, limited to the foreseeable and typically accruing loss or damage.
- (8) Liability for culpable injury to life, limb or health remains unaffected. Similarly, the customer's rights to claim liability under the German Product Liability Act

[*Produkthaftungsgesetz*] remain unaffected.

- (9) Any limitations on liability under the above provisions apply also in respect of the personal liability of our staff, employees, representatives and agents.

§ 6 Liability

- (1) The limitations of liability set out in paras. (5) to (9) of § 5 apply also in respect of any other claims, irrespective of the legal grounds on which they are asserted against us.
- (2) The statutory limitation period is unaffected by any tortious claims made against us; the customer is obliged, however, to bring any claims for compensation of damage relating to tortious claims within an exclusion period of one year after becoming aware of the conditions giving rise to the claim.

§ 7 Retention of Title

- (1) We retain title to all deliveries until full settlement of all amounts owed to us by the customer under the business relationship existing between us at the time of the relevant contract being entered into. If the customer has a current account relationship with us, our reservation of title applies also to any acknowledged balance. The same also applies if a balance is not acknowledged, but where a "causal" balance is established because, for instance, the customer becomes insolvent or enters liquidation.
- (2) The customer is entitled to resell to third parties items supplied subject to retention of title in the ordinary course of his business. In this event, however, the customer must assign to us all rights accruing to him against his purchasers through the resale. The assignment is limited to the amount of the final total invoice (gross) agreed between the customer and us. We accept the assignment. The customer is entitled to collect such receivables unless he is in default of payment. If the customer is in default of payment, we are entitled to withdraw the authorisation to collect receivables. The customer must then provide us with all information necessary in order to enable us to collect amounts due from the purchasers. We are entitled to revoke the right of resale and the right to collect amounts due if the customer experiences serious payment problems or an application to commence insolvency proceedings against the customer is filed.
- (3) If the customer further processes products supplied by us subject to retention of title, this further processing will always be carried out for us. If the customer reprocesses such products with other items that do not belong to us, we will acquire co-ownership of the new products to an extent reflecting the ratio between the final invoice value (including VAT) of the products we supplied subject to retention of title and the value of the other processed goods at the time of processing. The customer will safeguard our rights of co-ownership.
- (4) If products supplied by us subject to retention of title become inseparably mixed with other items/products, we will acquire co-ownership of the new products to an extent reflecting the ratio between the final invoice value (including VAT) of the products we supplied subject to

retention of title and the value of the other processed goods at the time of processing.
The customer will safeguard these rights of co-ownership.

- (5) The customer must observe due care in handling products supplied and also products which we co-own and is specifically obliged, at his own expense, to arrange adequate insurance (for the replacement value) against fire, water damage and theft.
Any maintenance and protective measures required must be promptly arranged by the customer at his own expense.
- (6) If the realisable value of collateral available to us exceeds the nominal value of receivables due to us by more than 10%, we will release collateral corresponding to that amount at the customer's request. The selection of collateral to be released will be determined by us.

§ 8 Place of Jurisdiction; Applicable Law; Place of Performance

- (1) The exclusive place of jurisdiction for all disputes arising from or pursuant to this contract, including any tortious claims, will be our place of business (the place at which we have our seat); we are also, however, entitled to file actions at the customer's general place of business. The first sentence above applies only to entrepreneurs, legal persons under public law and special funds governed by public law.
- (2) All contracts are agreed to be governed by German law; the provisions of the UN Sales Convention are explicitly excluded from application.
- (3) The place of performance for all obligations arising from the contract, including the customer's payment obligations, is our place of business. The first sentence above applies only to entrepreneurs, legal persons under public law and special funds governed by public law.