

# GENERAL TERMS OF SALE

## § 1 GENERAL - SCOPE

(1) Our terms of sale shall apply exclusively; we shall not acknowledge any other conditions submitted by the Ordering Party that are contrary to or deviate from our terms of sale, unless we have agreed explicitly to their applicability in writing.

Our terms of sale shall also apply when, although aware of conditions submitted by the Ordering Party that are contrary to or deviate from our terms of sale, we execute delivery to the Ordering Party without reservation.

- (2) All agreements reached between us and the Ordering Party for the purpose of implementing this agreement have been set down in writing herein.
- (3) Our terms of sale shall apply only with respect to contractors in the sense of § 310 Para. 1 BGB (German Civil Code), corporate bodies, and special assets under public law.
- (4) Our terms of sale shall also apply to all future transactions with the Ordering Party.

## § 2 TENDER - TENDER DOCUMENTS - WARRANTIES

- (1) When the order can be qualified as a tender in accordance with § 145 BGB, we may accept this order within two weeks.
- (2) We shall reserve all ownership and copyrights on pictures, drawings, calculations, and other documents. This shall also apply to such written documents that are designated confidential. All transfers to third parties by the Ordering Party shall require our prior explicit approval in writing.
- (3) References by ourselves or by the Ordering Party to technical specifications, technical regulations, or standards shall represent descriptions of the affected item's quality and shall not be deemed warranties.

## § 3 PRICES - TERMS OF PAYMENT

- (1) Provided that confirmation of the order does not specify otherwise, our prices shall apply ex works and only to the affected order, excluding reorders. Packaging, forwarding, shipping, insurance, installation, and commissioning costs shall be invoiced separately to the Ordering Party, as shall be the costs of application-based software and the retrieval and certification of certificates of origin, consular certificates, licences, and such like.
- (2) Our prices do not include the statutory value-added tax, which shall be specified separately on the invoice to the statutory amount on the day of invoicing.
- (3) The deduction of discounts shall require special agreement in writing.
- (4) Provided that confirmation of the order does not specify otherwise, the purchase price shall be due payment to the net amount (without deductions) within ten days of the invoice date. The legal regulations applying to the consequences of default payment shall apply.
- (5) Surcharge rights shall be granted to the Ordering Party only when its counterclaims have obtained legal force, are undisputed, or are acknowledged by ourselves. Moreover, the Ordering Party shall be authorised to exercise a right of retention only to the extent that the Ordering Party's counterclaim is based on the same contractual relationships.

## § 4 DELIVERY TIME

(1) Before the delivery time we specify can commence, all technical questions must first be clarified. Our delivery dates shall be specified in weeks ex works. Delivery and performance periods and times shall be binding only when we have confirmed them as such in writing. In all other cases they shall be deemed approximate and subject to change.

Delivery or performance times shall be deemed observed when we inform the Ordering Party within the agreed periods that the goods are ready for dispatch or when we agree on a date for providing the services. Suitable partial deliveries and generally acceptable or reasonable departures from the ordered quantities shall be permitted.

Should delivery or performance be delayed owing to the occurrence of events (e.g. breakdown of machinery or equipment, acts of government, energy supply problems, industrial action, etc.) that we could not prevent and/or foresee at the conclusion of the agreement despite the due care exercised, the delivery or performance period shall be extended accordingly.

(2) Our delivery obligations can be observed only when in addition the Ordering Party fulfils its obligations in due and appropriate form. Objections on the grounds of nonfulfilment hereof shall remain reserved.

(3) Should the Ordering Party default on acceptance or prove culpable in violating other obligations to cooperate, we shall be entitled to demand compensation for the losses incurred to ourselves so far, including any additional costs. Other claims shall remain reserved.

(4) Provided that the conditions under Para. (3) prevail, the risk of accidental loss or accidental deterioration of the purchased item is transferred to the Ordering Party as soon as the Ordering Party defaults, either as a debtor or for other cause, on acceptance.

(5) We shall accept liability under the terms of the law provided that the underlying purchase agreement is a fixed-date transaction in the sense of § 286 Para. 2 No. 4 BGB or § 376 HGB (German Commercial Code).

We shall also accept liability under the terms of the law provided that, as a consequence of default of delivery for which we are responsible, the Ordering Party is entitled to claim that its interest in the further fulfilment hereof has ceased.

(6) Moreover, we shall accept liability under the terms of the law provided that default of delivery was caused by an intentional or grossly negligent violation hereof for which we are responsible; default caused by our agents or subcontractors shall be assigned to ourselves. Provided that default is not caused by an intentional violation hereof for which we are responsible, our liability for compensation shall be limited to the foreseeable losses that are typically incurred.

(7) We shall also accept liability under the terms of the law provided that default of delivery for which we are responsible is caused by the non-accidental violation of an essential obligation hereunder; in this event, however, the liability for compensation shall be limited to the foreseeable losses that are typically incurred.

(8) In all other cases we shall accept liability in the event of nonaccidental default of delivery from the beginning of the third week following the delivery date for every full week of default to the amount of a flatrate compensation payment equalling 3% (in words: three per cent) of the delivery value, yet no greater than 10% (in words: ten per cent).

(9) Other legal claims and rights of the Ordering Party shall remain reserved.

## § 5 RISK TRANSFER - PACKAGING COSTS

(1) Provided that confirmation of the order does not specify otherwise, delivery shall be agreed ex works.

(2) Transport and all other packaging conforming to the German packaging ordinance shall not be retrieved, with the sole exception of pallets. The Ordering Party shall be obliged to dispose of the packaging at its own expense.

(3) Provided that the Ordering Party wishes this, we shall take out transport insurance on the delivery; the costs thus incurred shall be borne by the Ordering Party.

## § 6 LIABILITY FOR DEFECTS

(1) Before the Ordering Party can submit warranty claims, the Ordering Party must have properly fulfilled the due requirements under § 377 HGB (German commercial law) to examine and give notice of defects. A notice of defects shall be deemed submitted in time provided that we have received it within five working days following receipt of delivery or, in the case of hidden defects, following discovery.

(2) The extent to which the delivered products conform to the agreement shall be based on the description of the affected products and their design purpose in the confirmation of order. The Ordering Party shall accept all immaterial changes to the structure, geometry, design, or described specifications of the goods and/or to our performance when these are reasonable or within the generally acceptable quantity, quality, or design tolerances. Reference is made to § 2 (3). The item we are to deliver shall be free of defects when it is free of third party rights in Germany. We shall be liable for the freedom of third party rights in other countries only when this has been set down separately in the agreement.

Provided that the purchased item exhibits a defect, we shall be entitled to provide either subsequent performance in the form of remedy of defect or the delivery of a new, defect-free item. In the case of remedy of defect we shall be obliged to bear the costs of all work needed to remedy the defect, in particular transport, travelling, labour, and material costs, provided that these are not increased by the purchased item's having been transported to a location other than the place of delivery.

(3) Should subsequent performance fail, the Ordering Party shall be obliged to demand either withdrawal herefrom or reduction.

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- (4) We shall accept liability under the terms of the law provided that the Ordering Party submits compensation claims on the grounds of intent or gross negligence, including intent or gross negligence on the part of our agents or subcontractors. Provided that no intentional violation hereof is imputed to ourselves, liability for compensation shall be limited to the foreseeable losses that are typically incurred.
- (5) We shall accept liability under the terms of the law provided that we are responsible for a nonaccidental violation of an essential obligation hereunder; in this event, however, liability for compensation is limited to the foreseeable losses that are typically incurred.
- (6) Liability on the grounds of nonaccidental detriment to life, body, or health shall remain unaffected; this shall also apply to obligatory liability under the product liability laws.
- (7) Provided that there are no agreements on deviations from the aforementioned, liability shall be ruled out.
- (8) The period of limitation for claims on the grounds of defects is twelve months, beginning with the transfer of risk. In the case of claims that are not subject to limitation on the grounds of defects the time limit shall be eighteen months, beginning from the time the defect is discovered or the person causing the damage identified.
- (9) The period of limitation in the event of delivery recourse under §§ 478, 479 BGB shall remain unaffected and shall be five years following delivery of the defect item.
- (10) Should subsequent performance fail or should we reject this with good reason, we may exercise our right to request the Ordering Party to declare to us in writing any of its remaining warranty rights within one month. Should the Ordering Party fail to submit such a declaration within this period, warranty claims shall be ruled out. This shall apply only when we have referred explicitly to this legal consequence in our request containing a deadline.

### § 7 OVERALL LIABILITY

- (1) All liability for compensation other than that specified under § 6 - regardless of the legal nature of the submitted claim - shall be ruled out. This shall apply in particular to compensation claims from negligence in contracting, compensation claims on the grounds of other violations of obligations, or tortious claims to compensation for damaged property under § 823 BGB.
- (2) Provided that liability for compensation with respect to ourselves is ruled out or limited, this circumstance shall also apply with respect to the personal liability for compensation of our employees, workers, personnel, agents, and subcontractors.

### § 8 RETENTION OF OWNERSHIP

- (1) We shall reserve the ownership rights to the purchased item until receipt of all payments from the business dealings with the Ordering Party. Should the conduct of the Ordering Party be contrary hereto, in particular on default of payment, we shall be entitled to retrieve the purchased item. A purchased item we retrieve shall not be the subject of withdrawal herefrom unless we declare this explicitly in writing. Should we distraint a purchased item, this shall always entail withdrawal herefrom. After retrieving a purchased item we shall be entitled to exploit this, and the exploitation proceeds shall be set off against the liabilities of the Ordering Party - after deduction of appropriate exploitation costs.
- (2) The Ordering Party shall be obliged to handle the purchased item with the due care; in particular, the Ordering Party shall be obliged at its own expense to take out on the purchased item fire, water damage, and theft insurance adequate to the original value. Provided that maintenance and inspection work proves necessary, the Ordering Party must perform this in good time and at its own expense.
- (3) In the event of distraints or other interventions by third parties the Ordering Party must notify us immediately and in writing so that we can file action in accordance with § 771 ZPO (German Code of Civil Procedure). Provided that the third party is incapable of reimbursing us the court and extrajudicial costs of action under § 771 ZPO the Ordering Party shall accept liability for the losses incurred to ourselves.
- (4) The Ordering Party shall be entitled to resell the purchased item in the ordinary course of business; the Ordering Party, however, shall at this time immediately cede to us, to the amount of the invoiced total including VAT of our claim, all sums that accrue to the Ordering Party from the resale to its customers or third parties, and irrespectively of

whether the purchased item has been resold without or after processing. The Ordering Party shall be empowered to collect this claim, also after cession. Our authorisation to collect the claim ourselves shall remain unaffected. We shall, however, be obliged not to collect the claim as long as the Ordering Party fulfils its payment obligations from the received proceeds, does not default on payment, and in particular does not apply for the initiation of bankruptcy, composition, or insolvency proceedings, or there is suspension of payment. Should this, however, be the case, we may demand that the Ordering Party informs us of the ceded debts and the debtors, gives all the details needed for collection, hands over the corresponding documents, and informs the debtors (third parties) of this cession.

- (5) The Ordering Party shall process or refashion the purchased item for ourselves only. Should the purchased item be processed with other objects that do not belong to us, we shall acquire coownership of the new item in the ratio of the purchased item's value (invoiced total including VAT) to that of the other processed objects at the time of processing. In all other cases the same shall apply to the processed item as to the purchased item delivered with reservations.
- (6) Should the purchased item be inseparably mixed with other objects that do not belong to us, we shall acquire coownership of the new item in the ratio of the purchased item's value (invoiced total including VAT) to that of the other mixed objects at the time of mixing. Should mixing be such that the Ordering Party's item must be deemed the principal item, both parties shall agree that the Ordering Party transfers to ourselves proportional coownership. The Ordering Party shall be entrusted with the sole or coownership transferred thus to us.
- (7) The Ordering Party shall also cede to us for safeguarding our claims against the Ordering Party the debts that accrue against a third party through the purchased item's connection to real estate.
- (8) We shall be obliged to release at the request of the Ordering Party the securities due to us to the extent that the realisable value of our securities exceeds by over 10% (in words: ten per cent) the claims that must be safeguarded; the choice of which securities to release shall be our responsibility.

### § 9 VENUE - PLACE OF PERFORMANCE

- (1) Provided that the Ordering Party is a merchant, our registered office shall be the venue; we shall, however, be entitled to file action against the Ordering Party before its forum domicili as well.
- (2) The laws of the Federal Republic of Germany shall apply; recourse to the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be ruled out.
- (3) Provided that confirmation of the order does not specify otherwise, our registered office shall be the place of performance.