

General Terms and Conditions of Delivery and Payment

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§ 1 Scope of application

- (1) These General Terms and Conditions of Delivery and Payment (Terms and Conditions of Delivery) apply to all of our business relations with our customers (each, a "Customer"). The Terms and Conditions of Delivery apply only if the Customer is an entrepreneur (section 14 of the German Civil Code (*Bürgerliches Gesetzbuch*, **BGB**)), a legal entity under public law or a special fund under public law.
- (2) Unless agreed otherwise, these Terms and Conditions of Delivery are applicable in the version validly in effect at the time the Customer places an order or, in any case, in the version last notified to it in text form, and they constitute a framework agreement also for comparable contracts in the future, without us having to refer to them again in each instance. Our Terms and Conditions of Delivery apply exclusively.
- (3) Any general terms and conditions of business of the Customer that deviate from, conflict with, or supplement these Terms and Conditions of Delivery do not constitute part of the contract unless we have explicitly given our consent to their validity in writing. This requirement of consent applies in all cases, including where we make deliveries to the Customer without reservation notwithstanding our awareness of its general terms and conditions of business.

§ 2 Conclusion of contract

- (1) Our offers are non-binding and subject to change without notice.
- (2) When the Customer orders goods, this constitutes a binding contractual offer. Unless otherwise stated in the order, we shall be entitled to accept this contractual offer within two weeks from the date on which we receive it.
- (3) Acceptance can be declared either in text form (e.g. by written order confirmation) or by delivery of the goods to the Customer.

§ 3 Execution of shipments

Documents which form part of any order such as illustrations and drawings are not binding for the execution. We reserve the right to make relevant changes and improvements. The stated dimensions and weights represent approximate values only. This does not apply if it has been explicitly agreed upon in writing that parts will be manufactured according to specific drawings and specifications of the Customer. Deviations in dimensions and weights within the scope of tolerances customary in the industry do not entitle the Customer to price reductions or to raise complaints. We are entitled to carry out partial deliveries.

§ 4 Delivery time and default in delivery

- (1) The delivery period shall be agreed individually or specified by us upon acceptance of the order. If this is not the case, the delivery period shall be approximately 12 weeks from the conclusion of the contract, subject to the availability of raw materials and production capacities.
- (2) The commencement of the delivery time stated by us requires the clarification of all technical issues. Adherence to our delivery times further requires the timely and proper fulfillment of the Customer's obligations. The commencement of the delivery period is subject to the provision of any information, documents, drawings, permits, approvals or other requirements to be fulfilled by the Customer.
- (3) In the event of failure to comply with the delivery deadline due to force majeure such as riots, measures taken in the context of industrial disputes, including but not limited to, strike and lock-out, we shall be entitled to postpone delivery for the duration of the hindrance plus a reasonable start-up period or, we may, at our discretion, withdraw from the contract due to a part of it not yet being fulfilled. The Customer may demand a written declaration from us as to whether we wish to withdraw from the contract or to deliver within a reasonable grace period. We are entitled to two weeks' notice upon receipt of the request for submitting a written explanation. If no such written declaration is made, the Customer shall be entitled to withdraw from the contract insofar as it has not yet been fulfilled.
- (4) The occurrence of any default in delivery shall be determined in accordance with the statutory provisions. A warning notice (*Mahnung*) by the Customer shall in any event be required.
- (5) The rights of the Customer pursuant to section 8 (Other liability) of these Terms and Conditions of Delivery and our statutory rights, in particular in the event of preclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or subsequent performance), shall remain unaffected thereby.

§ 5 Delivery, transfer of risk, acceptance, default of acceptance

- (1) Deliveries shall be made "ex works", which is also the place of fulfillment for delivery and any subsequent performance. At the request of the Customer, the goods will be dispatched to a different location and the costs charged to the Customer (sale by delivery). Unless agreed otherwise, we shall be entitled to determine the type of

delivery ourselves (in particular, concerning the choice of carriers, shipment route, mode of transport, packaging).

- (2) The risk of accidental loss or accidental deterioration of the goods shall pass to the Customer when the goods are handed over to the Customer, at the latest. However, in the case of sale by delivery to a place other than the place of performance, the risk of accidental loss and accidental deterioration of goods, as well as the risk of delay, already passes over to the Customer when the goods are handed over to the forwarding agent, shipper or to the person or institution otherwise charged to carry out the shipment. Insofar as acceptance has been agreed within the framework of a contract for work and services, such shall be decisive for the transfer of risk. In all other cases, the statutory provisions governing contracts for work and services laws shall apply *mutatis mutandis* to an agreed acceptance. Delivery and/or acceptance shall be deemed to have taken place if the Customer is in default of acceptance.
- (3) If the customer is in default of acceptance or culpably violates other duties to cooperate, we shall be entitled to demand compensation for the damage incurred by us including additional expenses (e.g. storage costs). In the event of default in acceptance, the risk of accidental loss or accidental deterioration of the purchased item shall also pass to the Customer.

§ 6 Terms of payment

- (1) Unless otherwise agreed on a case-by-case basis, our prices applicable at the time of concluding the contract are "ex-works", plus statutory value-added tax (VAT). Insofar as nothing has been agreed in individual cases and a price list does not exist, we shall determine the price at our reasonable discretion (section 315 BGB).
- (2) In the case of sale by delivery (clause 5 (1)), the Customer shall bear the transport costs "ex works" and the costs of any transport insurance taken out at the request of the Customer. Furthermore, any customs duties, fees, taxes and other public charges shall be borne by the Customer.
- (3) The purchase price and/or remuneration for work is due and payable without deduction within 10 days of the invoice date and/or delivery or acceptance of the goods. Nevertheless, even in the course of an ongoing business relationship, we are entitled at any time to demand an advance payment - entirely or partially - prior to delivery.
- (4) The Customer is in default in payment as soon as the aforementioned payment period expires. Default interest is to be paid on the purchase price at the applicable statutory default interest rate during the period of default. We reserve the right to assert further claims for damages caused by default. Our claim to commercial maturity interest (section 353 of the German Commercial Code (*Handelsgesetzbuch*, **HGB**) vis-à-vis entrepreneurs shall remain unaffected thereby.
- (5) If the Customer fails to fulfill its payment obligation to pay in due time or does not pay the full amount, then all our receivables against the Customer existing at that point in time will become due with the accrual of the interest stated above. In this case, we are entitled to withhold our services from concluded agreements until the entire consideration due has been paid or, after setting a reasonable deadline, to refuse further contractual performance, to withdraw from the contract and, in the event of culpability, to claim damages.
- (6) Should it become apparent after the conclusion of the contract (e.g. due to a petition being filed for the institution of insolvency proceedings) that our claim for payment of the purchase price is at risk due to the Customer's inability to pay, we shall be entitled to refuse performance and to withdraw from the contract in accordance with the statutory provisions (section 321 BGB). In the case of contracts regarding the manufacture of non-fungible items (custom-made to the Customer's specifications), we may declare our withdrawal without notice. The statutory provisions regarding the dispensability of setting a deadline shall remain unaffected thereby.
- (7) The Customer shall only be entitled to a right of retention or set-off if its counterclaims are undisputed or recognised by final and binding judgment. In the event of defects in the delivery, the Customer's counterclaims, in particular pursuant to clause 7 (5) sentence 5 of these Terms and Conditions of Delivery, shall remain unaffected thereby.

§ 7 Guarantee

- (1) Unless otherwise provided below, the Customer's rights in the event of any defect in the quality (*Sachmangel*) of, or defect in the title (*Rechtsmangel*), to the performance (including any incorrect or shortfalls in delivery, as well as incorrect assembly of defective assembly instructions) shall be governed by the statutory provisions. In all cases, the statutory special provisions shall remain unaffected upon final delivery of the unprocessed goods to a consumer, even if the consumer has further processed them (supplier recourse pursuant to section 478 *et seqq.* BGB). Any claims arising from the supplier recourse shall be excluded if the defective goods were further processed by the purchaser or another entrepreneur, e.g. by integration into another product.
- (2) The basis for any liability for defects shall be the agreement reached on the condition/quality (*Beschaffenheit*) of the goods. All product descriptions and

manufacturer information which are the subject of the individual contract or which were published by us, for example, in catalogues or on our website, at the time the contract was concluded, shall be deemed to be an agreement reached on the quality of the goods.

- (3) Insofar as no agreement has been reached on the condition/quality, the statutory provisions must be applied to assess whether or not a product is defective. We assume no liability for public statements made by the manufacturer or other third parties (e.g. advertising messages) which the purchaser has not pointed out to us as decisive for its purchase.
- (4) The Customer's claims for defects shall be subject to the Customer's compliance with its statutory duties to carefully inspect for defects and to report any defects in a timely manner (sections 377, 381 HGB). In the case of building materials and other goods intended for installation or other further processing, an inspection must always be carried out immediately prior to processing. If a defect is detected at the time of delivery, inspection or at any later point in time, we must be immediately notified thereof in writing (in writing or text form). We must be notified of any blatant defects (including shortfalls and incorrect deliveries) within five working days of delivery in writing (written or text form). Defects which are not discernible during the inspection must be reported in writing within the same period of time from their detection. Any further processing is to be stopped immediately once a defect has been detected.
- (5) If the goods are defective, we shall be entitled to choose whether we render subsequent performance by remedying the defect or by delivering a defect-free item. A prerequisite for our liability for defects is that the defect is not a negligible defect. Our right to refuse subsequent performance pursuant to the statutory conditions shall remain unaffected thereby. We are entitled to make the subsequent performance owed subject to payment of the purchase price due by the Customer. The Customer is, however, entitled to retain part of the purchase price in an amount reasonably proportionate to the defect.
- (6) The buyer must grant us the time and opportunity required to render the subsequent performance owed, and must, in particular, hand over the rejected goods to us for inspection purposes. In the case of a replacement delivery, the buyer shall return the defective item to us in accordance with the statutory provisions. The subsequent performance includes neither the dismantling nor the reassembly of the defective item if we were not initially obliged to assemble it.
- (7) We shall bear and/or reimburse the expenses incurred for the purpose of inspection and subsequent performance, including but not limited to, transport, shipping, labour and material costs, as well as any dismantling and re-assembly if a defect actually exists. However, should a demand by the Customer to remedy a defect prove unwarranted, we may demand reimbursement from the Customer for the expenses incurred in this context (in particular inspection and transport costs) unless the lack of defectiveness was not apparent to the Customer.
- (8) Should subsequent performance be impossible or have failed, or should a reasonable period of time to be set by the customer for subsequent performance have expired unsuccessfully or be dispensable according to the statutory provisions, the Customer shall be entitled to choose either to reduce the purchase price accordingly or to withdraw from the purchase contract. In the case of an insignificant defect, however, there is no right of withdrawal.
- (9) Claims of the Customer for damages and/or reimbursement of futile expenses shall exist only in accordance with clause 8 (Other liability) and shall be excluded in all other cases.

§ 8 Other liability

- (1) Unless stipulated otherwise in these Terms and Conditions of Delivery, including the following provisions, we shall be liable for breaches of contractual and non-contractual obligations pursuant to the applicable statutory provisions.
- (2) Insofar as the Customer asserts claims for damages, we shall be liable, irrespective of the legal grounds, in cases of intent and gross negligence. In cases of ordinary negligence, we shall, subject to a milder degree of liability in accordance with the statutory provisions (e.g. for diligence in a matter), only be liable
 - a) for damage arising from loss of life, physical injury or damage to health,
 - b) for damage resulting from a serious violation of a material contractual obligation (an obligation, the performance of which is required for proper execution of the contract and on whose fulfilment the contractual partner generally relies and may rely). In this case, our liability for damages shall be limited to typical foreseeable occurring damage.
- (3) The limitations of liability pursuant to clause 8 (2) shall also apply to breaches of duty by or for the benefit of persons whose fault we are responsible for in accordance with statutory provisions. They shall not apply where we fraudulently concealed a defect or guaranteed the quality of the goods (cf. sections 444, 639 BGB). They shall also not apply to claims of the Customer pursuant to the Product Liability Act (*Produkthaftungsgesetz*).
- (4) A free right of termination of the buyer (in particular sections 650, 648 BGB) is excluded. Otherwise, the statutory requirements and legal consequences shall apply.

§ 9 Statute of limitations

- (1) In deviation from section 438 (1) no. 3 BGB, the general limitation period for claims arising from material defects and defects of title shall be one year from delivery. If an acceptance has been agreed, the limitation period shall commence upon acceptance.
- (2) If, however, the good is a building or an item which was used in accordance with its usual purpose for a building and which caused its defectiveness (building material), the statutory limitation period of five years from delivery (section 438 (1) no. 2 BGB) shall apply. Further special statutory provisions on limitation shall also remain unaffected (including but not limited to, section 438 (1) no. 1, (3) BGB, sections 444, 445b BGB).

§ 10 Retention of title

- (1) We reserve the right of retention of title to the goods sold until all of our current and future claims arising from the purchase contract and an ongoing business relationship (secured claims) are paid in full.
- (2) The goods subject to retention of title may neither be pledged to third parties nor transferred by way of security prior to full payment of the secured claims. The customer shall notify us in writing without undue delay if a petition for the institution of insolvency proceedings has been filed or if third parties otherwise gain access to the goods, (e.g. by pledge).
- (3) Unless any revocation has been declared in accordance with item c) below), the Customer shall be entitled to resell and/or process the goods subject to retention of title in the ordinary course of business in accordance with the following provisions:
 - a) The retention of title extends to the full value of the products that come into being through the blending, processing of, or combining with of our goods, whereby we shall be deemed the manufacturer of such goods. If the retention of title of any third party persists during the processing of, blending or combining with their goods, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods. In all other cases, the same shall apply to the ensuing products as to the goods delivered subject to retention of title.
 - b) The Customer hereby, and as of now, assigns to us all receivables towards any third party ensuing from the resale of the goods or of the product, either in full or to the amount of any co-ownership share in accordance with the above paragraph on securities. We accept this assignment. The purchaser's obligations stipulated in clause 10 (2) shall also apply in consideration of assigned receivables.
 - c) The Customer remains authorised to collect this claim even after its assignment. Our right to collect the claim ourselves shall remain unaffected thereby. We undertake not to collect the claim as long as the Customer discharges all payment obligations towards us, there is no deficiency in its ability to pay and we do not enforce retention of title by exercising a right in accordance with clause 10 (3). If this should be the case, however, we may demand that the Customer informs us of the assigned claims and the relevant debtors, provides all details required for collection, hands over the relevant documents and notifies the debtors (third parties) of the assignment. In this case we shall also be entitled to revoke the Customer's authorisation to re-sell and process the goods subject to retention of title.
 - d) If the realisable value of the securities exceeds our claims by more than 10%, we shall release securities of our choice at the Customer's request.

§ 11 General regulations

- (1) We retain title and copyrights to drawings, samples, models, cost estimates and the like. Such documents must not be made available to any third parties without our explicit prior written consent. The Customer's contractual partners shall be contractually bound accordingly.
- (2) In the case of orders for which the Customer provides us with certain features and properties, in particular, with regard to design, it assures us that such specifications do not infringe any industrial property rights of third parties. In the event of a claim, the Customer shall indemnify us against all claims in this respect.
- (3) All contracts between us and the Customer shall be governed exclusively by the laws of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods. The application of international private law and the United Nations Convention on Contracts for the International Sale of Goods ("UN Sales Convention") is excluded.
- (4) The exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be Würzburg (Germany) or, at our option, the court having jurisdiction for the Customer's branch office. Overriding statutory provisions (with particular reference to exclusive jurisdictions), shall remain unaffected thereby.

Düker GmbH