

General Terms and Conditions of Sale

§ 1 General points – area of validity

- (1) Our Terms and Conditions of Sale are valid only in relation to companies, juridical persons under public or private law and special asset funds under public law as defined by § 310 section 1 of the BGB [Bürgerliches Gesetzbuch: German Civil Code].
- (2) Our Terms and Conditions of Sale shall be valid exclusively. Conditions made by the customer in opposition to or deviating from these Terms and Conditions will not be recognised by us, unless we should have given our explicit written consent to their being recognised as valid. Our Terms and Conditions of Sale shall also apply in a case where we, having knowledge of conditions set by the customer in opposition to or deviating from our conditions, shall carry out delivery to the customer without making any express reservation.
- (3) Our Terms and Conditions of Sale shall apply likewise to all future business relations with the customer.
- (4) All agreements that have been made between us and the customer for the purpose of the execution of this contract have been set down in writing in the said contract.

§ 2 Offer – offer documentation

- (1) Our offer shall be subject to change without notice, in so far as no condition to the contrary may be derived from the confirmation of the order.
- (2) If the order is to be classified in legal terms as an offer as defined by § 145 of the BGB, we shall be entitled to accept the latter within two weeks.
- (3) We reserve to ourselves property rights and copyright in respect of all reproductions, drawings, calculations and other documents. This shall apply likewise to such written documents that have been designated as "confidential". Before these are passed to third parties, the customer shall be required to obtain our express written consent.

§ 3 Prices – conditions of payment

- (1) In so far as no other condition may be derived from the confirmation of the order, our prices shall apply "ex works", with the exception of packaging, which shall be charged for in a separate invoice.
- (2) Statutory VAT is not included in our prices; this will be indicated as a separate amount on the invoice, at the level set by statute on the day when the invoice is made out.
- (3) We reserve to ourselves the right to make any appropriate changes to our prices if after the conclusion of the contract costs should rise or fall, especially as a result of tariff agreements or changes in the price of materials.
- (4) Any deduction of discounts must be based on a special written agreement.
- (5) Without need of any warning, the customer shall be regarded as being in arrears if he shall fail to pay the due amount within 30 days from the time of its becoming payable and from the time of the receipt of the invoice or an equivalent payment schedule. The consequences of the customer's falling into arrears shall be subject to the relevant statutory regulations.
- (6) The customer shall be entitled to offsetting rights only if his counterclaims have been found valid at law, are uncontested or have been recognised by us. Besides this, he shall only be authorised to exercise a right of retention to the extent that his counterclaim shall be based on the same contractual relationship.

§ 4 Delivery time

- (1) The start of the delivery time stipulated by us shall be dependent as a precondition on the clarification of all technical questions.
- (2) Our adherence to our delivery obligations shall be further dependent as a precondition on the customer's having duly and punctually fulfilled all his obligations. We reserve to ourselves the right to bring defence on grounds of the non-fulfilment of the terms of the contract.
- (3) If the customer should fall into default in taking delivery or if he should culpably violate other obligations of cooperation, we shall be entitled to call for indemnification of any damages that may be incurred by us as a result, inclusive of any additional expenses. We reserve all rights in respect of any claims that go beyond this.
- (4) In so far as the conditions of section (3) shall have been fulfilled, the risk of accidental destruction or accidental deterioration of the object of the sale shall pass to the customer at the time when the latter falls into default in taking delivery or debtor's default.
- (5) We shall be liable in keeping with statutory stipulations, in so far as the sales agreement on which our relations with the customer are based is a transaction for delivery by a fixed date as defined by § 286 section 2 no. 4 of the BGB or § 376 of the HGB [Handelsgesetzbuch: German Commercial Code]. We shall also be liable in keeping with statutory stipulations in so far as in consequence of a delay in delivery for which we may be held responsible the customer shall be entitled to assert that his interest in the further fulfilment of the contract no longer subsists.
- (6) We shall further be liable in keeping with statutory stipulations, in so far as the delay in delivery shall be the consequence of a violation of the terms of the contract for which we may be held responsible and that is based on deliberate intent or gross negligence. In this connection any culpability on the part of our representatives or vicarious agents shall be attributed to us. In so far as the delay in delivery shall not be the consequence of a violation of the terms of the contract for which we may be held responsible or that is based on deliberate intent, our liability to indemnify the customer for damages shall be limited to such damages as are foreseeable and typically occur.
- (7) We shall also be liable in keeping with statutory stipulations, in so far as the delay in delivery for which we may be held responsible shall be the consequence of a culpable violation of an essential contractual obligation; in this case, however, our liability to indemnify for damages shall be limited to such damages as are foreseeable and typically occur.
- (8) In other respects we shall admit liability in a case of delayed delivery for each completed week of delay, based on a one-off indemnification payment on arrears to the amount of 0.5% of the value of the goods to be delivered, not however to exceed a maximum of 5% of the value of the goods.

§ 5 Passing of risk – packaging costs

- (1) In so far as no condition to the contrary may be derived from the confirmation of the order, delivery "ex works" shall be considered as having been agreed to.
- (2) The return of packaging materials shall be subject to separate agreements.
- (3) In so far as the customer requests it, we shall take out insurance coverage for the transport of goods. The costs thereby incurred shall be borne by the customer.

§ 6 Liability for defects

- (1) Claims by the customer based on defects in the goods shall depend as a precondition on the latter's having duly complied with the obligations of examination and complaint incumbent on him as defined by § 377 of the HGB.
- (2) In so far as a defect shall be found in the object of sale, we shall be entitled at our own discretion either to carry out subsequent fulfilment in the form of a rectification of the said defect or to deliver a new article that has no defects. In a case where the defect is to be rectified we shall be obliged to bear such expenses as may be necessary for the purpose of rectification of the defect, in particular carriage and transport costs and the costs of work and materials, in so far as these shall not be increased through the object of sale's having been moved to another location than the place of fulfilment, not however to an amount in excess of the sale price.
- (3) If subsequent fulfilment should prove unsuccessful, the customer shall be entitled at his own discretion to call either for withdrawal from the contract or for a reduction of the price.
- (4) We shall admit liability in keeping with statutory stipulations in so far as the customer shall make good indemnification claims based on deliberate intent or gross negligence on our part, including deliberate intent or gross negligence on the part of our representatives and vicarious agents. In so far as no violation of the terms of the contract based on deliberate intent may be laid to our charge, the liability to indemnify for damages shall be limited to such damages as are foreseeable and typically occur.
- (5) We shall admit liability in keeping with statutory stipulations in so far as we shall culpably violate an essential contractual obligation; in this case, however, our liability to indemnify for damages shall be limited to such damages as are foreseeable and typically occur.
- (6) In so far as the customer shall be entitled to a claim to indemnification of damages in place of performance, our liability even as defined by section (3) above shall be limited to indemnification for such damages as are foreseeable and typically occur.
- (7) Our liability in a case of culpable injury to life, limb or health shall remain unaffected. The same applies likewise to any binding obligations based on the Produkthaftungsgesetz [Product Liability Act].
- (8) In so far as nothing to the contrary has been determined by the foregoing stipulations, any liability is hereby excluded.

- (9) The period of limitation for claims based on defects in the goods shall be 12 months, counted from the time when the risk passes to the customer.
- (10) The period of limitation in the event of a delivery recourse in accordance with §§ 478 and 479 of the BGB shall remain unaffected; it shall amount to five years, reckoned from the time of the delivery of the defective article.

§ 7 Overall liability

- (1) Any further liability to indemnify the customer going beyond that provided for in § 6 above is hereby excluded, without reference to the legal nature of the claim asserted. This shall apply in particular to indemnification claims arising from culpability at the time of the conclusion of the contract, because of other violations of obligations or because of claims in tort for indemnification of material damages as defined by § 823 of the BGB.
- (2) The limitation stipulated in section (1) above shall also apply in so far as the customer, in lieu of a claim for indemnification, shall call for the reimbursement of useless expenses instead of performance.
- (3) In so far as the liability to indemnify the customer in relation to us has been excluded or limited, the same shall apply with reference to the personal liability of our staff, workers, employees, representatives and vicarious agents.

§ 8 Reservation of property rights

- (1) Until the receipt of all payments arising from our business relations with the customer, we reserve to ourselves all property rights in the articles of sale. In so far as it shall have been agreed with the customer that settlement of the purchase price shall be on the basis of the cheque-bill exchange procedure, this reservation shall further extend until the redemption of the bill of exchange by us accepted by the customer, and shall not expire with the crediting of the cheque received by us. In case the customer's actions should violate the terms of the contract, in particular if he should fall into arrears of payment, we shall be entitled to take back the articles of sale. Reclamation of the articles of sale by us entails a withdrawal from the contract. After reclamation of the articles of sale we shall be authorised to realise their value, the resulting profit to be set against the customer's liabilities, with the deduction of the costs involved in the realisation of their value to an appropriate amount.
- (2) The customer shall be obliged to treat the articles of sale with due care. In particular, he shall be obliged to insure them at his own cost against damage by fire, water and theft, for an adequate amount corresponding to the value of the articles as new. In so far as maintenance or inspection work shall be called for, the customer must carry this out punctually at his own expense.
- (3) The customer is to inform us in writing without delay of any distraints or other interventions by third parties, so that we may be in a position to bring suit in accordance with § 771 ZPO [Zivilprozessordnung: German Code of Civil Procedure]. In so far as the third party shall not be in a position to reimburse us for the court costs and out-of-court costs of a suit in accordance with § 771 of the ZPO, the customer shall be liable to us for the deficit that results to us in consequence.
- (4) The customer shall be entitled to sell on the articles of sale based on regular business procedures. He shall however assign to us, as of now, all claims to the amount of the final billing amount (including VAT) of our claim that may accrue to him as a result of the redisposal of the articles in relation to his customer or any third parties, this without reference to whether the articles of sale that are sold on have been subjected to further processing or not. The customer shall remain entitled to call in this claim even after the assignment. Our entitlement to call in the claim ourselves remains unaffected by this. We hereby undertake however not to call in the claim so long as the customer fulfils his obligations of payment from the profits he has realised, does not fall into arrears of payment and in particular if no application for the opening of composition or insolvency proceedings has been submitted and no suspension of payments has occurred. If however this should be the case, we may insist that the customer make known to us the assigned claims and the debtors in question, providing us with all the particulars required for calling in the claim, putting into our hands the associated documents and notifying the debtors or third parties of the assignment.
- (5) The processing or remodelling of the articles of sale by the customer shall always be undertaken for us. If the articles of sale shall have been processed using other objects not belonging to us, we shall acquire co-ownership rights in the new article in proportion of the value of the article of sale (final billing amount, including VAT) to the value of the other processed objects at the time of the processing. In other respects the same terms shall apply to the article created by this processing as to the articles of sale delivered under the above reservations.
- (6) If an article of sale shall have been inextricably combined with other objects not belonging to us, we shall acquire co-ownership rights in the new article in proportion to the value of the article of sale (final billing amount, including VAT) to the value of the other objects that have been combined with it at the time the combination was made. If the combination has been made in such a way that the article of the customer is now to be seen as the main article, it is hereby taken as agreed that the customer shall assign us a proportional co-ownership right. The customer shall safeguard the sole ownership or co-ownership rights that so arise on our behalf.
- (7) In order to guarantee any claims we may have against himself, the customer shall also assign to us any claims on a third party which accrue to him through the linking of the articles of sale with a landed property.
- (8) We hereby undertake to release the sureties to which we are entitled at the request of the customer in so far as the realisable value of our sureties shall exceed the value of the claims to be guaranteed by more than 10%. The choice of the sureties to be released shall be our responsibility.

§ 9 Prohibition of assignment

- (1) The assignment of claims against us to third parties is hereby excluded, in so far as we shall not have given our express consent to such an assignment.

§ 10 Copyright

- (1) In so far as software forms part of the goods delivered, this shall be made available to the purchaser exclusively for purposes of use in keeping with the terms of the licence in each case, that is to say, the customer may not copy it nor may he make it available for the use of others. Any rights of multiple use shall call for a special written agreement. In case of a violation of this agreement the purchaser shall be liable to the full amount for the resulting damages.

§ 11 Secrecy

- (1) The purchaser shall be obliged to maintain secrecy for an unlimited period with regard to all information to which he may gain access in connection with our deliveries to him that in view of other circumstances are plainly recognisable as business and operating secrets and as matters on which confidentiality is to be maintained, and not to record these or pass them on to third parties or exploit them in any way whatever in so far as this shall not be required in pursuance of the object of the contract.

§ 12 Data protection

- (1) We shall be entitled to process the data relating to the customer obtained in respect of our business relations with him or in connection with the same subject the terms of the Bundesdatenschutzgesetz [Federal Data Protection Act].

§ 13 Export

- (1) The re-export of the goods from the Federal Republic of Germany shall be subject to the statutory stipulations of Germany and the United States, and is not permissible without official authorisation. The export of our goods to countries not belonging to the EC shall call for our consent in writing, irrespective of the fact that the purchaser is himself responsible for obtaining any official import or export authorisations required. The purchaser shall be responsible for adherence to the relevant stipulations through to delivery to the end consumer.

§ 14 Court of law – place of fulfilment

- (1) In so far as the customer is a businessman, the responsible court of law shall be that of our main place of business; we shall however also be entitled to bring suit against the customer at the court of the place of his domestic residence.
- (2) The law of the Federal Republic of Germany shall apply exclusively; any application of UN sales law is hereby excluded.
- (3) In so far as no conditions to the contrary may be derived from the confirmation of the order, our main place of business shall be the place of fulfilment.