

# General Terms of Delivery and Payment

## § 1 Scope of applicability

1. Our deliveries and services are subject solely to the following conditions. Conditions of the customer only apply to the extent that they coincide with our conditions. We do not acknowledge any terms of the customer at variance with our conditions unless we have done so explicitly in writing. Our terms of delivery and payment also apply if we deliver to the customer without any reservations although we are aware of customer's terms and conditions which contradict or deviate from our terms of delivery and payment.
2. These terms of delivery and payment only apply to businessmen/enterprises ("Unternehmer" within the meaning of § 14 BGB (German Civil Code)), legal persons under public law or special funds under public law ("öffentlich-rechtliches Sondervermögen").

## § 2 Offers and tender documents

1. Our offers are non-binding. The order of the goods by the customer shall be viewed as a binding offer to contract. The contract requires our order confirmation for its validity.
2. We reserve copyright and title to illustrations, drawings, calculations and other documents. Upon demand such documents, including any copies, are to be returned. They must not be made available to third parties without our written consent. Reproduction and imitation are not permitted.

## § 3 Prices and conditions of payment

1. The agreed prices are deemed ex works (EXW pursuant to Incoterms 2010) from our place of business in Cologne, excluding packing and without oil filling. The packing will be invoiced separately.
2. Our prices do not include statutory value added tax (VAT). The VAT will be added at the statutory rate valid on the day of invoice and stated separately.
3. To the extent nothing contrary has been contractually agreed, the purchase price is due and payable immediately after the date of invoice without deductions. The statutory rules apply to delayed payments.
4. The customer is not entitled to retain payments due to counter-claims from other contractual relationships or to offset any such counter-claims unless these are recognised by us, are uncontested or have been determined finally and absolutely by a court.
5. In the case of material deterioration of the customer's financial condition, by which our payment claim for the purchase price is at risk, we are entitled to render any further performance only in immediate return ("Zug um Zug") for payment or security. Any other legal rights are reserved.
6. We reserve the right to adjust our prices adequately if there are more than three months lapse between the contract date and delivery or the last partial delivery, and there have been cost increases or decreases that are not attributable to us, especially due to materials costs, the increase in raw or auxiliary materials prices, wages and salaries, freight or public charges. In this case, we will net costs decreases and increases. We will produce evidence of these cost changes to the customer upon demand.
7. In case of partial deliveries, upon demand, the customer is obliged to render partial payments.

## § 4 Delivery period

1. The stated delivery period commences once all technical and legal issues have been clarified. It is also necessary for the commencement of the delivery period that the customer has fulfilled all his duties and other obligations in a timely and proper manner. We reserve the right to raise the defence of non-

performance of the contract ("Einrede des nicht erfüllten Vertrages") and to assert a right of retention ("Zurückbehaltungsrecht").

2. Partial deliveries are permitted where they are reasonably acceptable to the customer under consideration of the customer's interests.
3. If we are prevented from keeping agreed delivery dates as a result of force majeure, labour disputes, governmental action, energy or raw material shortages, transport bottlenecks or hindrances, operational hindrances, for example due to fire, water and/or machine defects, for which we are not responsible, or other disruptions in the flow of operations either at our premises or those of suppliers or subcontractors for which we are not responsible and which can be proved to have a significant impact, we are obliged to inform the other party without undue delay ("unverzüglich"). In such cases we are entitled to extend the delivery period by the period of the event of force majeure or the disruption if we have informed the customer pursuant to the above information obligation. If delivery becomes impossible as a result thereof, our obligation to supply shall become null and void to the exclusion of claims for damages. If the customer proves that subsequent performance of the contract is of no interest to him as a result of the delay, he may rescind the contract to the exclusion of any further claims. If the event of force majeure or the disruption lasts longer than one month, we may rescind the contract as regards to that part which has not yet been performed if we have informed the customer pursuant to the above information obligation and if we have not assumed the risk of procurement ("Beschaffungsrisiko") or a delivery guarantee.
4. Paragraph 3 applies mutatis mutandis if and to the extent that we had entered into a covering transaction before the conclusion of the contract with the customer which – if properly executed – would have enabled us to fulfil our contractual obligations in our relationship with the customer, and we have been supplied by our suppliers incorrectly and/ or belatedly with no fault on our part.
5. If the customer is in default of acceptance ("Annahmeverzug") or if the delivery is delayed for reasons for which the customer is responsible, we are entitled to claim compensation of the damages incurred as a result thereof, including additional expenses, if any. In these cases, we will store the goods at the customer's risk and invoice the customer for such storage.
6. If we are in default, we are liable in accordance with § 9 of these terms of delivery and payment.

## § 5 Passing of risk, transportation, packaging

1. Unless otherwise provided in the order confirmation the delivery is agreed ex works (EXW pursuant to Incoterms 2010) from our place of business in Cologne. Place of delivery and place of performance is our place of business in Cologne. This applies also when we have assumed the installation, set-up, or other services. The risk of accidental destruction, resp. deterioration, in particular the risk of impairments to surface quality due to prolonged storage outdoors, passes to the customer as soon as we have made notice of our readiness to deliver and the customer has failed to undertake the required cooperative actions incumbent on him.
2. If dispatch has been agreed, the risk of incidental loss or incidental deterioration of the goods shall pass to the customer on delivery of the goods to the freight forwarder or any other person or establishment entrusted with the execution of the dispatch. This applies also if our own vehicle performs the delivery or we have assumed the transport costs or have advanced them.
3. If it has been agreed that we perform transportation we may choose the means of transportation to the extent not otherwise specially agreed in the order confirmation. The customer bears additional costs incurred for any special or accelerated form of transportation he desires, even if we assume the freight charges. If dispatch or the hand over is delayed for reasons attributable to

the customer, the risk shall pass to the customer on the date on which the goods are ready for dispatch and we have notified the customer of such.

4. Insurance against transport damage is only obtained at the instruction of the customer, who bears the expense.
5. If the contract is annulled for reasons for which the customer is responsible, the customer is obliged to return the goods we delivered to our place of business in Cologne, at his own risk and expense.
6. If the customer wants to return the transport and product packaging to us, the customer is obliged to return it to our place of business in Cologne during customary business hours. Transport and product packaging have to be returned clean, free of foreign substances and sorted according to the various packaging materials. If this is not done then the customer will bear any additional disposal costs incurred.

#### § 6 Examination and Notification

1. The warranty rights of the customer require the proper performance of the obligation to inspect and give notice of defect, if any, in accordance with § 377 HGB (German Commercial Code). If the contractual relationship between the customer and us constitutes a contract for work and services ("Werkvertrag"), § 377 HGB applies accordingly.
2. When the goods are transported by a freight forwarder or a carrier, immediately after delivery of the goods the customer is obliged to acknowledge us the receipt of the goods in text form. Further the customer is obliged to give notice of any recognisable damage incurred by transportation and / or any loss in text form to the responsible forwarder or carrier at the latest after the goods have been delivered and have the forwarder or carrier to confirm this notice.

#### § 7 Warranty

1. The statutory provisions shall apply to the rights of the customer with respect to material or legal defects (including incorrect delivery and short delivery) if nothing to the contrary is determined in the following. In all cases the statutory special provisions on final delivery of the goods to a consumer (Sections 478, 479 of the German Civil Code (BGB)) shall not be affected.
2. If we are to perform according to drawings, specifications, models, instructions, etc. of the customer, then the customer bears the risk of suitability for the intended purpose.
3. If an acceptance inspection (*Abnahme*) has been agreed with the customer, a complaint about defects which the customer could have detected during a careful acceptance or initial specimen inspection is excluded.
4. Initially we are to be given the opportunity to examine the defect reported by means of remote maintenance.
5. If the delivered goods or the work created is defective, the Customer is entitled to the statutory rights as follows:
  - (i) We are first entitled to either remedy the defect or to supply the customer goods free from defect as we so choose or in the case of a contract for work and services ("Werkvertrag") to produce a new work (subsequent performance (Nacherfüllung)). The customer must give us the necessary time and opportunity for this. We are obliged to bear all expenses necessary for subsequent performance, in particular transport, labour and material costs. If the customer's request for defect remedy proves to be unjustified, we are entitled to claim from the customer compensation of the costs incurred by us as a result of the request. Where we were under no obligation originally to install/ assemble the product, the subsequent performance ("Nacherfüllung") does not comprise the deinstallation/ disassembly of the defective product nor its reinstallation/

reassembly. In the event of a replacement delivery or new production in the case of contracts for work and services, the customer must return the defective goods to us on request. We are entitled to make the subsequent performance contingent on the customer paying the price agreed for the goods delivered. The customer is entitled, however, to retain an appropriate part of the price.

- (ii) If the subsequent performance fails, the customer is entitled to rescind the contract or to request a reduction in the agreed purchase price as he so chooses. However, there shall be no right of rescission in the case of a minor defect.
  - (iii) Claims of the customer for compensation of damages or replacement of expenses only apply in accordance with the provisions in § 9 of these terms of delivery and payment.
6. The limitation periods are governed by § 10 of these terms of delivery and payment.

#### § 8 Retention of title

1. We reserve title to the goods delivered until receipt of all payments deriving from the business relation with the customer. The allocation of individual claims in current invoices or balances and their recognition do not constitute waiver of the retention of title. If the customer is in breach of the contract, in particular delay in payment, we are entitled to withdraw from the contract and demand return of the goods, in accordance with the law.
2. The customer is obliged to handle and store the goods subject to retention of title careful and in accordance with the applicable regulations or instructions given, in particular to insure them sufficiently at new value against fire, water and theft, at his own expense. The customer is obliged to perform any necessary service and inspection work in good time and at own expense.
3. In the event of loss or damage to the goods subject to reservation of title, the customer hereby assigns to us any claims to insurance payments existing in this connection in the amount of the final invoice (including value-added tax) of our claims with respect to the object of delivery by way of additional security in advance.
4. The goods subject to reservation of title may neither be pledged to third parties nor assigned by way of security by the customer without our explicit written consent before complete payment of the secured claims. The customer is to inform us in writing without undue delay ("unverzüglich") of attachment or any other seizure or encroachment by third parties, so that we may file an action. Insofar as the action was successful and the third party is unable to reimburse us the court and out-of-court costs of legal action, the customer shall be liable for the costs we have sustained.
5. The customer shall be entitled to resell the goods delivered in the normal course of business. He herewith assigns to us, however, all claims amounting to the final invoice amount (including value-added tax) of our claims which accrue from the resale vis-à-vis his customers or third parties, irrespective of whether the goods purchased have been sold again with or without further processing. After such assignment the customer shall also remain entitled to collect this claim. Our right to collect this claim ourselves shall remain unaffected thereby. However, we undertake not to collect the claim provided that no bill or cheque protests are raised and the customer fulfils his payment obligations arising from the proceeds received, the customer is not in default of payment and, in particular, no application to initiate insolvency proceedings with regard to the customer's assets has been filed. If this is the case, however, we may demand that the customer notifies us of the claims assigned and their debtors, provides all details necessary for their collection, delivers the relevant documents and informs the debtors (third parties) of said assignment.
6. If the goods delivered by us subject to retention of title are inseparably mixed or so combined with items/materials not belonging to us such that they constitute integral components

("wesentliche Bestandteile") of an integrated item, then we thus acquire co-ownership of the new item in the proportion of the value of the goods subject to retention of title to the other mixed or combined items/ materials at the time of combination or mixture. If the combination or mixture proceeds such that the customer's item is to be seen as the main item, then it is deemed agreed now that the customer transfers proportional title to us so that we become co-owner of such item. The customer keeps the so created item held in co-ownership in custody for us. To items created by combination or mixture the same provisions apply that apply to the goods subject to retention of title.

7. If the goods subject to retention of title become integral components ("wesentliche Bestandteile") of the land of the customer or a third party, e.g. through permanent connection to the land, then the customer is deemed to have already assigned to us the assignable claims for remuneration against the third party or other party concerned resp. the claims accrued to him from a sale of the land or rights in the land in the amount of the value of the goods subject to retention of title, together with all subsidiary rights, including the right to create a mortgage by way of security, and with rank prior to all others. We accept this assignment.
8. In case of deliveries abroad, if certain measures and / or declarations by either party are necessary to ensure the effectiveness of the above mentioned reservation of title and / or certain other rights referred to in the paragraphs above, the customer is obliged to inform us accordingly in writing or in text form and to take all necessary measures and / or make all necessary declarations without undue delay at its own expense. If the law of the country of import does not permit to retain the reservation of title to the delivered goods, the customer is obliged to provide another appropriate security to the goods delivered or provide any other equivalent collateral based on equitable discretion (s. 315 German Civil Code - BGB) at its own expense.
9. To the extent that the total realisable value of security/collateral granted to us more than temporarily exceeds 110% of our outstanding remaining claims against the customer, we are obliged upon the customer's demand to release excess security/collateral of our choice in the amount of such excess.

## § 9 Liability

1. To the extent not otherwise provided herein, we are liable for damages, regardless of legal basis, in particular due to defects, delays, impossibility of performance, fault in contractual negotiations and tort, only if intentional or grossly negligent, including intent and gross negligence on the part of our representatives or vicarious agents or other persons engaged by us in the performance of our obligations ("Erfüllungsgehilfen"), or in the case of intentional or negligent breach of a material contractual obligation, i.e. a duty, the satisfaction of which makes the due implementation of the contract at all possible and which the Customer can therefore usually expect to be satisfied by us, (cardinal duty – "Kardinalpflicht"). To the extent we cannot be accused of any intentional breach of duty, the liability for damage compensation is limited to damage that can be anticipated and is typical.
2. Claims for damages arising from injury of life, limb and health as well as claims of the customer pursuant to the German Product Liability Act and the special statutory provisions on final delivery of the goods to a consumer (Section 478, 479 of the German Civil Code (BGB)) as well as other mandatory statutory liability regulations shall not be affected by the liability exclusions and limitations set out in paragraph 1. The above liability exclusions and limitations shall also not apply insofar as we have fraudulently concealed a defect or insofar as we are liable because of the assumption of a guarantee or of the risk of procurement ("Beschaffungsrisiko").

3. Paragraph 1 and 2 also apply if the customer demands reimbursement of futile expenditures instead of asserting a claim for damages.
4. To the extent that our liability for damages is excluded or limited, such exclusion or limitation is deemed to also apply to the personal liability for damage compensation of our staff, workers, employees, representatives and vicarious agents or other persons engaged by us in the performance of our obligations ("Erfüllungsgehilfen").

## § 10 Statute of Limitations

1. Customer's claims for defects in quality or title become time-barred after expiry of one year from the time when the limitation period has begun to run according to the German statutory provisions.
2. Mandatory German statutory provisions regarding limitation periods remain unaffected. Hence the reduced limitation period regulated in paragraph 1 do in particular not apply for claims based on an injury of life or limb or health, for claims based on wilful or grossly negligent conduct and for claims based on the assumption of a guarantee. In addition the longer limitations periods pursuant to § 438 para. 1 no. 1 German Civil Code (BGB) (third party rights in rem), §§ 438 para. 1 no. 2, 634 a para. 1 no. 2 German Civil Code (BGB) (buildings ("Bauwerke"), building materials ("Baustoffe"), building components ("Bauteile") as well as a work the result of which is the planning of a building); §§ 438 para. 3, 634 a para. 3 German Civil Code (BGB) (fraud) and § 479 German Civil Code (supplier recourse) shall remain unaffected.
3. The limitation periods which apply in the case of defects in quality or title according to paragraphs 1 and 2 apply mutatis mutandis to any concurrent contractual and extra-contractual claims for damages of the customer which are based on a defect of the goods sold under the contract. If and to the extent that the application of the statutory regulations governing limitation would cause the concurrent claims to become time-barred at an earlier point in time, such concurrent claims are deemed to be subject to the statutory limitation period. In any case, the statutory limitation periods under the German Product Liability Act ("Produkthaftungsgesetz") remain unaffected.
4. If and to the extent that the limitation period for claims is shortened according to paragraphs 1 to 3, such a shortening also applies mutatis mutandis to any claims of the customer asserted against our legal representatives, employees, personnel, staff, agents and vicarious agents and other persons employed by us in the performance of our obligations ("Verrichtungsgehilfen" / "Erfüllungsgehilfen") provided that such claims are based on the same legal cause.

## § 11 Right of Termination, Right of Recession

1. The customer is only entitled to rescind the contract for a breach of duty on our part other than a defect if we can be made responsible for such breach of duty.
2. If the contract in question is a contract for work and services in which the contractor undertakes to bring about a particular result ("Werkvertrag") or a contract for work and services in which the contractor supplies the material from which non-fungible movable items are to be made ("Werklieferungsvertrag"), the right of the customer to freely terminate the contract according to §§ 651, 649 German Civil Code (BGB) is excluded.

## § 12 Choice of Law, Place of Jurisdiction, Partial Nullity

1. The law of the Federal Republic of Germany applies; UN sales law does not apply.
2. If the customer is a merchant, legal person under public law or a special fund under public law ("öffentlich-rechtliches Sondervermögen") as defined by German law, the place of

jurisdiction for any and all disputes arising directly or indirectly from the contractual relationship is Cologne. We are, however, entitled to also take legal action against the customer before the court having jurisdiction at its place of residence.

3. If any provision of these terms of delivery and payment or any provision in any other agreement should be or become invalid, this will be without prejudice to the validity of all other provisions and agreements.