

# Sales and Delivery Conditions

## I. General Provisions / Applicability

1. These standard terms and conditions apply to all current and future business relations with contractors. Contractors in this sense are natural or legal persons or partnerships with legal capacity, acting with regard to a business relation of a commercial or self-employed professional activity.
2. Deviating, contradicting or amending standard terms and conditions of our contractual partners shall not become part of the contract, even in the knowledge of these or with unconditional delivery to our contractual partners, unless we have explicitly given our written consent to their application.

## II. Offer / Conclusion of a Contract / Placing of Orders

1. Any documents belonging to an offer, such as images, sketches and specifications, are non-binding as long as their binding character has not explicitly been defined contractually. We reserve our right of ownership and copyright of all images, sketches, calculations and other documents authored by us. Before passing them on to a third party our contractual partner needs our explicit written consent.
2. Our offers are subject to change. Technical changes remain reserved insofar as they are just and reasonable; this reservation is also valid for subcontracts.
3. Our contractual partners must acknowledge as binding upon the content of the contract our written confirmation of an order. Any confirmation of an order which deviates from the content of contractual agreements shall be irrelevant for the contractual relationship.
4. Conclusions of contract with our contractual partners are made subject to the correct and timely self-delivery by our suppliers if we are not at fault of failure to deliver. We shall inform our suppliers about those impediments without delay.

## III. Prices and Payment

1. Unless agreed otherwise in writing, our prices are ex works and do not include packaging and the respective amount of applicable value-added tax. Costs for packaging will be invoiced separately.
2. Payments have to be made as indicated in the order confirmation or invoice. Unless especially agreed in writing, a discount shall be viewed as not agreed and a minimum quantity surcharge in the net amount of € 5.00 for any order value lower than € 10.00 net shall be charged.
3. Unless agreed otherwise in writing, payment has to be made within 30 days following delivery. Payments to our representatives shall only count as contractual performance if collecting power has been proved. The consequences of the customer's falling into arrears shall be subject to the relevant statutory regulations.
4. The right to set off a claim is only given to our contractual partners when their counterclaim has been legally proved or been acknowledged by us; and they are only entitled to exercise a right of retention insofar as their counterclaim is based on the same contractual relationship.
5. In the event that no fixed price is agreed, the right to carry out appropriate price amendments owing to changes in the cost of wages, materials, and distribution is reserved pertinent to deliveries effected 3 months or more after conclusion of the Agreement.

#### **IV. Delivery Times**

1. Binding delivery times must be agreed in writing. Delivery times do not start before clarifying all technical issues; moreover, the timely and proper fulfilment of the obligations of the contractual partners is a prerequisite. Delivery times shall be deemed to have been complied with if the delivery item has left our works or readiness for delivery has been notified before such period expires.
2. Delivery times shall be appropriately extended in case of measures taken in the context of industrial disputes as well as unforeseeable obstacles beyond our control, as long as such obstacles are not the result of intent or gross negligence on our part. This shall also apply if such circumstances occur at sub-suppliers. We shall notify our contractual partners of any such circumstances without delay.
3. Should our contractual partner default in acceptance or contravene culpably cooperation duties, statutory provisions apply. Claims and rights of our contractual partners due to a delivery delay for which we are responsible are, outside the aforementioned provisions, subject to the applicable statutory provisions, too.

#### **V. Transfer of Risk, Partial Deliveries, Over- or Under-Deliveries**

1. The risk for delivery passes onto the customer at the latest on dispatch of the consignment; this also applies if the contractual partner desires the goods be sent to him. This applies irrespective of an agreement about taking over freight charges. If requested by our contractual partners, the deliveries will be covered by transport insurance, the cost of which shall be borne by the contractual partners.
2. Partial deliveries are permissible.
3. In case of customized products, over- or under-deliveries of up to 10% shall not give rise to a complaint from the contractual partner.

#### **VI. Retention of Title**

1. We reserve title to goods delivered by us until payment in full of all our claims, including those arising in the future, resulting from the business with our contractual partner has been made. In the event that our contractual partner acts in breach of contract, in particular in the case of default in payment, we shall be entitled to repossess the purchased goods and to exercise our statutory rights. We are also entitled after repossession of the goods to sell the same elsewhere and deduct the sales revenue from the liabilities of our customer, minus reasonable utilization costs.
2. Our contractual partner shall treat the delivered goods with due care during the retention of title. As far as maintenance and inspection works are required, our contractual partner must perform such work in good time and at his own expense. Our contractual partner is obliged to notify us without delay in writing in the event of seizures or other action by third parties with respect to the delivery item. In the event of legal action as per §771 ZPO [German Code of Civil Procedure], our contractual partner shall be liable for the judicial and extra-judicial costs incurred unless third parties are to reimburse these costs.
3. Our contractual partner shall be entitled to resell the delivered item in the normal course of business; however, he assigns to us here and now all demands in the amount of the final commercial invoice including value-added tax that accrue to him by reason of the resale, irrespective of whether the subject of delivery has been resold without procession. The contractual partner shall be entitled to enforce the aforementioned claims even after their assignment. Our authority to collect the receivables ourselves shall remain unaffected hereby; however, we undertake not to collect the receivables as long as the customer complies with

his payment obligations arising out of the proceeds collected, is not in default of payment, and in particular has not filed a petition for the opening of insolvency proceedings and payments have not been suspended. However, in the event of any of these circumstances, we may demand that our contractual partner make the assigned receivables and their debtors known, provide all necessary information for collection, turn over the associated documentation and inform the debtors of the performed assignment. Extraordinary disposals, such as pledges, transfer by way of security and any and every assignment are not permissible.

4. The alteration of the goods subject to retention of title by our contractual partner is always done on our behalf. In the event of processing, combining or blending of the goods subject to retention of title with other goods not belonging to us, we shall acquire co-ownership of the new goods at the ratio of the value of the goods delivered by us to the value of the other, foreign material. Our contractual partner shall hold the new goods for us free of charge. However, he herewith already assigns to us his rights of ownership and co-ownership of the new goods.
5. If the realizable value of the retained securities exceeds the claim to be secured by 20%, we shall on the contractual partner's request release securities at our discretion; the burden of proof for exceeding the claim to be secured is borne by our contractual partner.

## **VII. Liability for Defects**

For all defects of delivered goods we assume liability deviating from the legal regulations, insofar as deviation is permissible, as follows:

1. Our contractual partner as contractor shall notify obvious defects within a period of two weeks as of reception of the delivered goods in writing, otherwise the assertion of defect rights is excluded. To observe the deadline the timely dispatch shall be sufficient. Our contractual partner as contractor bears the burden of proving all eligibility requirements, in particular for the existence of a defect, for the date of its identification and for the timeliness of the notice of defects.
2. With respect to the quality of the delivered goods in principle only our product description shall be understood as agreed between ourselves and our contractual partner. Further statements, promotion or advertisements of a manufacturer do not constitute a contractual quality description of the goods. We do not grant warranties in the legal sense to our contractual partners. Other warranties by manufacturers remain unaffected by this. We do not offer any warranty for material supplied by our contractual partners or procured on the basis of their specification and for designs specified by our contractual partners and we do not assume liability for defects based thereupon.
3. For defects of the delivered goods we shall provide supplementary performance by rectification or replacement delivery. If the supplementary performance fails our contractual partner is entitled to the legal rights.
4. Claims of our contractual partners for defects expire after one year upon delivery of the goods. The limitation period of a delivery recourse acc. §§ 478, 479 BGB [German Civil Code] remain unaffected.
5. Claims of our contractual partners for the expenses required for the purpose of supplementary performance, in particular transportation, road, labor and material costs, are excluded insofar as the expenses increase because the goods supplied by us have

subsequently been delivered to a place different from the branch of our contractual partner, unless the shipment arises from the intended consumption.

6. Our liability according to the legal regulations remains unaffected insofar as our contractual partners pursue claims for damages based on intent or gross negligence, including intent or gross negligence of our representatives or vicarious agents. The same applies in case of our violation of essential contractual obligations. In case of slightly negligent violations of obligation our liability is limited to the foreseeable, contract-typical and immediate average damage for this type of delivered goods; this also applies to slightly negligent violations of obligation of our legal representatives or vicarious agents. We do not assume any liability in case of slightly negligent violation of negligible contractual obligations.

The above liability limitations do not affect claims of our contractual partners from product liability. Furthermore, these liability limitations do not apply to personal injury or injury to health assignable to us or to the loss of life of our contractual partners.

Claims for damages of our contractual partners due to a defect expire after one year upon delivery of goods, except if we can be accused of malicious intent.

7. Recourse claims of our contractual partners against us acc. §§ 478, 479 BGB only exist insofar as our contractual partner has not reached any agreements with his customer that exceed the mandatory legal claims for defects. For the scope of the recourse claims of our contractual partners § 6 applies accordingly.
8. For compensation claims due to our violation of pre-contractual obligations or of contractual secondary obligations the stipulation in § 6 applies accordingly.

#### **VIII. Data Protection**

Our contractual partners agree that they are able to process any data acquired under the scope of this business relationship, no matter whether these originate from our contractual partners themselves or third parties, in accordance with the Federal Data Protection Act.

#### **IX. Final Provisions, Place of Jurisdiction and Place of Performance**

1. The contract shall be governed by the laws of the Federal Republic of Germany; the terms of the UN Sales Convention do not apply.
2. Insofar as our contractual partner is a merchant, a legal entity under public law or a special fund under public law, the exclusive place of jurisdiction for all disputes resulting from this contract is our place of business. The same shall also apply if our contractual partner has no general place of jurisdiction in Germany or the usual abode at time of legal action commencement is not known.
3. Unless otherwise agreed, place of performance is our place of business.
4. Should individual provisions of this agreement with our contractual partners, including these General Provisions, be or become wholly or partly invalid, the legal validity of the other regulations shall remain unaffected by this. The parties to this agreement, however, for substitution of the invalid provision, undertake to agree on a legally permissible regulation which comes closest to the commercial purpose of the invalid provision.