

**I. General terms and scope**

- (1) These General Terms and Conditions (hereinafter referred to as "GTC") shall exclusively apply to all our offers, supplies and other services, in particular to contracts for the sale and/or delivery of movable goods, software or drawings (hereinafter referred to as "goods") – irrespective of whether we produce the goods ourselves or purchase them from subcontractors – insofar as the customer (hereinafter referred to as "Principal") is an entrepreneur (§ 14 German Civil Code), a corporate body under public law or a special fund under public law.
- (2) These GTC shall also apply to all future deliveries, services or offers to the same Principal, even if they are not agreed again separately and without any requirement on our part to repeat reference to them in an individual case.
- (3) Any deviating terms and conditions of the Principal shall only become part of the contracts if we have given our express written acceptance thereof. This consent requirement shall also apply if, with the knowledge of the terms and conditions of the Principal, we carry out the delivery to him without reservation.

**II. Offer and conclusion of contract**

- (1) Our offers are non-binding and without obligation unless they are expressly marked as binding. This shall also apply in case we have provided the Principal with technical documentations (e.g. drawings, plans, estimates, calculations, reference to DIN standards), further product descriptions or documents including in electronic form. We reserve our proprietary and copy rights to these documents.
- (2) The order by the Principal shall be considered to be a binding offer to enter into a contract. Unless otherwise stipulated in the order, we shall be entitled to accept this tentative offer within 4 weeks of receipt by us.
- (3) The legal relationship between us and the Principal shall be governed exclusively by the written contract (including specification of services or confirmation of order and these terms and conditions). Individual agreements made with the Principal (including framework contracts; assurances, collateral agreements, additions and amendments) shall have precedence over these GTC. A written contract or our written confirmation shall be decisive for the content of such agreements.

**III. Delivery, term of delivery and delay of delivery**

- (1) The term of delivery is agreed individually or is stated by us on acceptance of the order, e.g. in the order confirmation.
- (2) The course of the term of delivery shall not begin before the Principal's performance of its duty to cooperate, in particular the receipt of documents, approvals and releases to be provided by him; the provision of sample parts to be worked on, all necessary information, technical details and parameters as well as agreed down payment.
- (3) If shipping was agreed, terms of delivery and delivery dates shall refer to the point in time the goods are handed over to the forwarder, carrier or any third parties assigned with the transport.
- (4) The occurrence of a delay in delivery on our part is determined in accordance with legal provisions. A reminder from the Principal shall be required in any case.
- (5) We shall not be liable for the impossibility of deliverance or for delay in delivery insofar as these are caused by force majeure or other events unforeseeable at the time of concluding the contract (e.g. operating disruptions of all kind, difficulties in procuring material and power, transport delays, strikes, lack of manpower, energy or raw materials; non-delivery or incorrect or late delivery by suppliers) and which are beyond our control. If such events significantly impair delivery or service or render the same impossible and if the hindrance is not of a temporary nature, we are entitled to withdraw from the contract. In the case of hindrances of a temporary nature the supply and service obligations shall be extended by the time period of the hindrance plus a reasonable warm-up period.  
If as a result of the delay the Principal cannot reasonably be expected to accept the delivery and service, he may withdraw from the contract by way of immediate written notification.
- (6) Insofar as we cannot meet binding delivery deadlines due to subsequent service amendments or additions requested by the Principal, we shall inform the Principal thereof without delay and at the same time shall notify him of the expected new and reasonably extended term of delivery.

- (7) If we are in default with a service or delivery or it becomes impossible for us to make a delivery or provide a service, regardless of whatever reason, our liability to pay compensation for damages shall consequently be limited in accordance with Number VIII. of these GTC.

**IV. Transfer of risk, acceptance, default of acceptance**

- (1) Deliveries are made from our warehouse which also is the place of performance. At the request and expense of the Principal the goods may be shipped to another place of destination (sale to destination). Unless agreed otherwise, we shall be entitled to determine the kind of shipping (in particular shipping company, dispatch route, packaging).
- (2) The risk is transferred to the Principal no later than at the time the goods are handed over to him. In the event of sale to destination, however, the risk of accidental loss and accidental deterioration of goods as well as risk of delay is already transferred to the Principal when the goods are handed to the carrier, forwarder or the person or organization charged with carriage of the goods. Insofar as acceptance is agreed, it shall be decisive for passage of risk. The statutory provisions of the law on contracts for services shall apply analogously in other respects to an agreed acceptance. It is deemed equivalent to the handover or acceptance if the Principal is in default with the acceptance.
- (3) If the Principal is in default of acceptance or if he fails to perform an act of cooperation or if the delivery is delayed for other reasons, for which the Principal is responsible, we shall be entitled to demand compensation for any loss thereby incurred including additional expenses (e.g. storage costs). For this purpose we shall charge a lump sum compensation in the amount of 0.25 % of the invoice amount of the goods to be stored per full week of storage, starting with the term of delivery. In case of lack of term of delivery this shall be the notification of shipment readiness of the goods. The proof of higher damages and our statutory claims (in particular reimbursement of additional expenses, reasonable compensation, termination) remain unaffected. The lump sum is however to be offset against further monetary claims. The Principal shall be allowed to produce evidence that we have not suffered any loss at all, or that this is significantly lower than the loss allowance.

**V. Prices and payment**

- (1) Prices shall be valid for the scope of services and supplies listed in the order confirmation. Additional or special services will be calculated separately. Prices are in EUROS and ex works plus costs for packaging and the applicable statutory value added tax, customs for export deliveries, duties, taxes and other official charges.
- (2) If shipping was agreed, the Principal shall bear the transport costs from our warehouse and the costs for transport insurance if requested by him. Transport packaging and all other packaging in accordance with the packaging classification shall not be taken back. The Principal shall acquire the property thereof, with the exclusion of pallets.
- (3) The Principal is only entitled to set-off or to exercise any rights of lien or retention to the extent his claim is undisputed or has finally been adjudicated upon by the courts. In case of defects at the delivery the contrary rights of the Principal shall remain unaffected in particular in accordance with Number VII. of these GTC.
- (4) If, after conclusion of the contract, it should become evident that our claim to agreed payment is jeopardized due to poor performance on the part of the Principal (e.g. filing for commencement of insolvency proceedings), according to statutory regulations we are entitled to refuse service and – if applicable after setting a deadline – to cancel the contract (§ 321 German Civil Code). In case of contracts concerning the production of unreasonable objects (individual productions) we can declare the cancellation immediately. This shall not affect the legal provisions concerning the dispensability of fixing a time limit.

**VI. Reservation of title**

- (1) We retain the ownership of all the goods delivered by us until the complete settlement of all existent current and future claims resulting from the contract and a current business relationship, including secondary claims and claims for damages (secured claims).
- (2) The goods subject to reservation of title may neither be pledged to third parties, nor assigned as collateral before full payment of the

secured claim. The Principal must inform us immediately in writing if and insofar as there are any accesses of third parties to the goods which belong to us.

- (3) In case the Principal is in breach of the contract, in particular in the event of non-payment of the invoice amount, we shall be entitled in accordance with statutory regulations to withdraw from the contract or/and demand the goods back on basis of reservation of title. The claim for return shall not simultaneously contain a declaration of withdrawal from contract; rather, we shall be entitled to demand only the return of the goods and to reserve the right to cancel the contract. If the Principal does not pay the due invoice amount, we may assert these rights only if we have unsuccessfully set the Principal a reasonable deadline for payment in advance or if setting such period is not necessary according to the statutory provisions regarding contract cancellation.
- (4) The Principal shall have the right to process and/or sell the goods under reservation of title in the proper course of business. In such a case the reservation of title extends to the products that are made by processing, mixing or combining our goods.
- (5) The Principal shall keep the goods subject to reservation of title and the new goods of which we are owners or co-owners safe free of charge. He shall take out insurance against the usual risks.

#### **VII. Warranty**

- (1) The warranty period is one year from delivery or, if acceptance is agreed, from acceptance.
- (2) The delivered goods shall be inspected immediately after delivery to the Principal or to a third party designated by him. We shall be notified of defects found during inspection in writing without delay. Otherwise, the delivery shall be regarded as accepted.
- (3) If the delivered goods are faulty, we can initially choose whether we shall provide subsequent performance by remedying the defect (subsequent improvement) or by delivering faultless goods (substitute delivery). Our right to refuse the chosen type of subsequent performance under the statutory regulations remains unaffected.
- (4) We are entitled to make remedial performance conditional upon the Principal paying the invoice amount due. The Principal shall, however, have the right to retain a part of the invoice amount which is reasonable in the ratio to the defect.
- (5) The Principal shall give us the time and opportunity for due subsequent performance, in particular to hand over the faulty goods for inspection reasons. In the event of a substitute delivery, the Principal shall return the faulty goods in accordance with statutory regulations. Subsequent performance shall neither include disassembly of the faulty goods nor assembly if assembly was not originally a contractual requirement.
- (6) The expenses necessary in connection with inspection and subsequent performance, in particular as regards transport, travel, labour and materials costs (assembly and disassembly cost excluded), shall be to our account if a defect does indeed exist. However, if the Principal's request for removal of defects turns out to be unjustified, we can demand reimbursement of the costs incurred hereby from the Principal.
- (7) If subsequent performance has failed or a reasonable deadline which is to be set by the Principal for the subsequent performance has expired unsuccessfully or it is dispensable in accordance with statutory regulations, the Principal may withdraw from the purchase contract or reduce the purchase price. The right of withdrawal does not exist with an insignificant defect.
- (8) Claims of the Principal for damages or reimbursement of fruitless expenses shall only exist according to Number VIII. and are incidentally excluded.

#### **VIII. Other liability, liability for damages caused by fault**

- (1) Unless otherwise stated in these GTC including the following provisions, we shall be liable according to the relevant statutory regulations if we are in breach of contractual and non-contractual obligations.
- (2) Our liability for damages, regardless of the legal grounds, in particular due to impossibility, delay, defective or incorrect delivery, contractual infringement, infringement of duties during contract negotiations and action in tort is in so far as there is a question of blame in each case, limited in accordance with the provisions stated hereunder.  
We shall not be liable in case of ordinary negligence by our corporate entities, legal representatives, employees or other agents if the breach is not a fundamental contractual duty. Essen-

tial contractual obligations include the obligation to deliver the goods that are free of essential defects in a timely manner as well as advisory, protective and duties of care that enable the Principal to use the goods in the contractually described manner or whose purpose is to protect the lives and health of the Principal's personnel or the Principal's property against substantial damage.

- (3) In case of liability for ordinary negligence our liability to pay damages for property damage and resulting loss of profit shall be limited to an amount corresponding to the current cover sum of the product liability insurance, even if this is a case of infringement of obligations essential to the contract.
- (4) The aforementioned exclusions and limitations of liability shall apply to the same extent in favour of the corporate entities, legal representatives, employees and other agents.
- (5) The aforesaid restrictions do not apply for liability on account of deliberate actions; for guaranteed characteristics; on account of injury to life, limb or health or according to the product liability law.

#### **IX. Termination**

- (1) An unrestricted right of termination for the Principal (in particular subject to §§ 651, 649 German Civil Code) shall be excluded. Otherwise statutory requirements and legal consequences shall apply.
- (2) The customer can only withdraw from the contract or terminate the contract due to an infringement of an obligation not constituted by a defect if the infringement of an obligation is attributable to us.

#### **X. Statute of limitations**

- (1) The general statute of limitations for claims from defects of quality and title is one year from delivery of the goods.
- (2) This shall not apply if the law prescribes longer periods according to § 438 para. 1 No. 2, § 479 para. 1 or § 634 a para. 1 No. 2 German Civil Code. This shall not affect special statutory provisions for the restitution of property of third parties (§ 438 para. 1 No. 1 German Civil Code), fraudulent intent (§ 438 para. 3 German Civil Code) and for claims of recourse against the supplier in final supply to a consumer (§ 479 German Civil Code).
- (3) The aforementioned limitation periods shall also apply for contractual and non-contractual damage claims by the Principal based on a defect in the delivered goods, unless application of the normal statutory limitation period (§§ 195, 199 German Civil Code) would, in the individual case, lead to a shorter limitation period. The limitation periods of the German Product Liability Act will remain unaffected in any case. Otherwise any claims for damages by the Principal under Number VIII. shall be governed exclusively by the statutory provisions.

#### **XI. Choice of law and jurisdiction**

- (1) These GTC and all legal relationships between us and the Principal are subject to the law of the Federal Republic of Germany to the exclusion of international uniform law, in particular UN Convention on Contracts for the International Sale of Goods. The pre-requisites and effects of the reservation of title according to Number VI. are on the other hand subject to the law of the respective storage location of the object insofar as accordingly the choice of law which was agreed is inadmissible or invalid for the benefit of German law.
- (2) The exclusive and international place of jurisdiction for all disputes resulting directly or indirectly from the contractual relationship including summary procedures is our place of business in Chemnitz. However, we shall also be entitled to take legal actions at the general venue of the Principal.
- (3) In so far as the contract with the Principal or these GTC contain any omissions, those legally effective provisions which the contracting partners would have agreed according to the commercial aims of the contract and the purpose of the GTC had they known the omissions are considered to be agreed for filling these omissions.

**Vorstehende Übersetzung des mir in deutscher Sprache vorgelegten Textes ist in ihrer englischen Version richtig und konform.**

**14.01.2015 Janine Pecher  
Staatlich geprüfte, öffentlich bestellte und allgemein beidigte Übersetzerin für die englische Sprache**