

GENERAL DELIVERY AND PAYMENT TERMS

1. GENERAL

Our deliveries and services shall be provided exclusively under the following Terms. This shall also apply to future transactions of any kind, even if these Terms were not referred to separately in individual cases.

The conditions of purchase or other terms of our contract partner—hereinafter referred to as the Buyer—shall be hereby expressly rejected. They shall not even apply to us if we do not expressly refuse them during contract conclusion.

2. OFFERS / CONTRACT CONCLUSION

- a) Our offers shall remain non-binding.
- b) Additions or changes to concluded agreements including these General Delivery and Payment Terms must be issued in writing to be effective. With the exception of managing directors and authorized representatives our employees may not conclude deviating oral agreements. Transmissions via fax shall be sufficient for meeting the written form requirement.

3. PRICES / DESPATCH / TRANSFER OF RISK

- a) Unless agreed to otherwise in individual cases our prices shall be in Euros ex works plus packaging, legal VAT and customs duties for exports as well as fees.
- b) The place of fulfilment for any obligations from the contractual relationship shall be our main office. By request of the seller the goods will be sent to another destination. The shipping method and packaging shall be subject to our dutiful discretion.
- c) Transport risk shall be borne by the Buyer in any case. This risk shall be transferred to the Buyer at the latest after the handover of the delivery object to the carrier, freight forwarder or other third party tasked with completing the delivery. This shall also apply if we assume other services especially such as shipping costs or delivery.

4. DELIVERY / DELIVERY TIME

- a) Stated delivery times are always approximate unless a fixed delivery date was expressly agreed to. Commencement of the delivery time requires any technical questions to have been settled. Adherence to delivery obligations further requires orderly fulfilment of the obligations of the Buyer on time. Should despatch have been agreed delivery periods and date shall refer to the time of the handover to the carrier, freight forwarder or other third party tasked with completing the delivery.
- b) Should we be unable to meet binding delivery deadlines for reasons for which we are not responsible (unavailability of service) we shall notify the Buyer without delay and inform him of the new projected delivery period. If the service is still not available during the new delivery period we may withdraw from the contract in whole or in part; we shall refund any payments already made by the Buyer without delay. Late self-delivery by our supplier shall especially constitute a case of unavailability of a service in this sense if we concluded a congruent coverage agreement.
Statutory regulations on the execution of the contract in case of exclusion of service obligations (e.g. if the service and/or rectification is impossible or intolerable) shall remain unaffected. Withdrawal and terminations rights of the Buyer under No 5. of these Terms shall also remain unaffected.
- c) Should we fall behind with a delivery or service or should a delivery or service become impossible for whatever reason our liability for damage compensation shall be limited in accordance with No 6 of these Terms.

5. GUARANTEE

- a) Statutory regulations shall apply to the rights of the Buyer for material defects and defects of title (including false and short deliveries) unless determined otherwise hereinafter. In any case the special statutory regulations on final deliveries of goods to a consumer (supplier regress in accordance with Sections 478 & 479 of the German Civil Code [Bürgerliches Gesetzbuch]) shall remain unaffected.
- b) Defect claims of the Buyer require him to have fulfilled his examination and reporting obligations (Sections 377 & 381 of the German Commercial Code [Handelsgesetzbuch]). Should a defect be discovered through examination or subsequently it must be reported to us in writing without delay. The defect shall be considered to have been reported without delay if it is reported within 7 business days. Irrespective of these examination and reporting obligations the Buyer must report obvious defects (including false and short deliveries) in writing at the latest within seven business days of the delivery. Should the Buyer fail to conduct an orderly examination and/or submit a report our liability for unreported defects shall be excluded.
- c) Should goods display defects during the transfer of risk the Buyer shall have a right to rectification. This shall consist of remedying the defect or a replacement delivery at our discretion.
- d) Defect claims shall not be granted for minor deviations from the agreed condition or insignificant impairment of usability. Likewise no guarantee shall be provided for the following cases: unsuited or improper use, erroneous installation or start-up by the Buyer or third parties, natural wear, incorrect or negligent treatment and improper maintenance. Should the Buyer or a third party implement improper changes or maintenance, no defect claims shall be granted for them or the resulting consequences insofar as statutory regulations for this are met.
- e) Should a subsequent delivery fail the Buyer may withdraw from the contract or lower the purchase price. Further or other claims by the Buyer against the supplier or his vicarious agents due to material defects shall be excluded except for No 6 of these Terms.
- f) Claims of the Buyer for expenses required for rectification especially transport, travelling, work and material costs shall be excluded if expenditures increase because the object of the delivery was subsequently delivered to another destination than that agreed to with the Buyer unless the shipment corresponds to an intended use.
- g) Statutory recourse claims of the Buyer against the supplier shall only be granted insofar as the Buyer concluded no agreement with his client beyond statutory defect claims. No 5 f) shall further apply to the extent of the recourse claims of Buyer against the supplier.

6. DAMAGE COMPENSATION CLAIMS

- a) Unless resulting otherwise from these General Delivery and Payment Terms including the following regulations we shall be liable for breaches of contractual and non-contractual obligations in accordance with statutory regulations.
- b) We shall be liable for damage compensation—for whatever legal reason—in case of intent or gross negligence. In case of simple negligence we shall only be liable for
 - damages resulting from injuries to life, the body or one's health,
 - damages resulting from breaches of essential contractual obligations (obligations on whose fulfilment orderly contract execution depends and on whose adherence the contract partner regularly relies and may rely);

however in this case our liability shall be limited to compensation for foreseeable typically occurring damages.

- c) The liability limitations resulting from No 6 b) shall not apply if we fraudulently conceal a defect or provided a guarantee for the condition of goods. The same shall apply to claims of the Buyer under the German Product Liability Act [Produkthaftungsgesetz].
- d) The above-stated liability exclusions and limitations shall apply to the same extent to our bodies, legal representatives, employees and other vicarious agents.

7. STATUTE OF LIMITATIONS

- a) Contrary to Section 438(1) Number 3 of the German Civil Code, the general statute of limitations for claims for material defects and defects of title shall be one year following the delivery of the service.
- b) The above-stated statute of limitations for purchase rights shall also apply to contractual and non-contractual damage compensation claims of the Buyer resulting from defects of goods. The statute of limitations of the German Product Liability Act shall remain unaffected in any case. Apart from that except for No 6 of these Terms the statutory statute of limitations shall apply to damage compensation claims of the Buyer.

8. RIGHTS OF RETENTION

- a) We shall retain ownership of any goods delivered to us (reserved goods) until the purchase price is paid in full and until all of our claims from the business relationship including subsequently concluded contracts have been paid.
- b) The Buyer may resell the goods under the ordinary course of business if he is not in default regarding his obligations towards us or suspends his payments. Individually the following shall apply:
 - The Buyer shall hereby assign any claims from resale or other sales activities, e.g. work contracts, including all ancillary rights to us proportionately even if the goods have been processed, mixed or combined and we acquired co-ownership for the amount of our invoice value or if the goods are installed fixedly. If the reserved goods are sold by the Buyer together with other goods not delivered by us the Buyer shall hereby assign a preferential share of the resale claim to us in the amount of the invoice value of our reserved goods. If the Buyer sold these claims as part of non-recourse factoring he shall hereby assign the claim to take its place to us for the factor. Should the resale claim be put into an account correcting relationship by the Buyer with his client the Buyer shall hereby assign his claim to us for the amount of the invoice value of the reserved goods.
 - We shall hereby accept the above-stated assignments.
 - The Buyer may only resell the claims if he likewise reserves title until his resale claims have been paid in full.
 - The Buyer may collect the claims assigned to us until our revocation. This collection authority shall expire upon the revocation which shall occur upon payment default or payment suspension by the Buyer. In this case we shall be authorized by the Buyer to inform his clients of the assignment and to collect the claims ourselves. On our request the Buyer must submit to us an exact list of the claims to which he is entitled including the names and addresses of the clients, the amount of the individual claims, invoice dates etc. and any information required for asserting the assigned claims and allow us to review these statements.
 - Amounts received by the Buyer from assigned claims must be stored separately until they are transferred to us.
 - Pledging or transferring the security for reserved goods or assigned claims shall be prohibited. Any pledges must be reported to us without delay under inclusion of the pledge creditor.
 - Should the value of the security to which we are entitled exceed our total claim against the Buyer by more than 10% we must release the security on request of the Buyer.
 - In case of payment default or suspension by the Buyer we may take back the reserved goods. Should we take back reserved goods because of our reservation we shall withdraw from the contract if we expressly declare it. We may satisfy our claims freely through the taken back reserved goods.
 - The Buyer shall store the reserved goods for us free of charge. He must insure them against common dangers such as fire, theft and water damage to the usual extent. The Buyer shall hereby assign his damage compensation claims against insurance companies or other parties required to provide compensation to which he is entitled due to damages of the kind stated above in the amount of our claims. We shall accept the assignment.

9. PAYMENT / OFFSETTING PROHIBITION / RIGHT OF RETENTION

- a) Unless agreed to otherwise our invoices must be paid within 8 days minus a 2% discount or within 30 days without discount. Cheques shall only be accepted as conditional payment. Payment shall only be deemed to be effect after cheques have been fully honoured.
- b) In case of default the Buyer must pay default interest of 12% though at least the amount of the statutory interest rate. Should the interest in Sentence 1 exceed the statutory interest rate the Buyer may prove that default damages were not incurred or incurred at a lower amount. The assertion of greater default damages shall not be excluded.
- c) Should the Buyer default on a payment all claims shall become due immediately.
- d) Should the financial circumstances of the Buyer deteriorate significantly and threaten our claim we may demand advance payment or an appropriate security. This shall even apply if circumstances present prior to contract conclusion only become known to us subsequently. Should the advance payment or the security not be provided within the grace period despite a notice we may withdraw from the contract or demand damage compensation for non-fulfilment.
- e) The Buyer may not offset with counterclaims unless his claims are based on the same contractual relationship or the counterclaims are uncontested or have been legally established.

10. PLACE OF FULFILMENT / PLACE OF JURISDICTION

- a) The place of fulfilment shall be our main office.
- b) The place of jurisdiction for both contract partners shall be Hersbruck, Germany.

11. APPLICABLE LAW

The contractual relationship between us and the Buyer shall be governed by German law under exclusion of the UN sales convention (CISG).