



## **General Terms and Conditions of Business**

### **1. General**

- (1) Only our terms and conditions of sale shall apply. We shall not recognise a customer's terms and conditions of business differing from or contrary to our own terms and conditions of sale unless we have expressly agreed in writing to their application. Our terms and conditions of sale shall also apply in those cases in which we carry out the delivery to the customer without reservation in the knowledge that his terms and conditions of business differ from, or are contrary to, our own.
- (2) All agreements which are made between us and the customer for the purposes of carrying out this contract are laid down in writing in this contract plus the T&Cs on this page. Agreements or supplements to these terms and conditions shall be subject to our written confirmation to be legally valid.
- (3) Our terms and conditions of sale shall only apply for business owners with the meaning of § 310 Section. 1 of the German Civil Code [BGB]. Our terms and conditions of sale shall also apply for all future business transactions with the customer.

### **2. Offer / Applicable law**

- (1) Our offer is subject to change without notice, provided that there is nothing to the contrary in our order confirmation.
- (2) If we receive an order from a customer, which is to be judged to be an offer in accordance with § 145 of the German Civil Code [BGB], we may accept it within two weeks from receipt.
- (3) If the consignment is to be delivered to a country other than Germany the legal relationship shall be governed substantively by the law of Germany, including the UN law on sales.

### **3. Price – Terms and conditions of payment**

- (1) Provided that the order confirmation does not state otherwise, our prices shall apply "ex works" excluding packing, freight, postage and insurance.
- (2) Statutory VAT is not included in our prices. It shall be shown separately in the invoice at the rate in force on the date on which the invoice is presented.
- (3) We shall reserve the right to increase or reduce prices to reflect the changes in our costs if a delivery period of more than four months has been agreed for contracts. If the increase is more than 5% of the originally agreed price, the customer shall consequently be entitled to terminate the contract.
- (4) Provided that the order confirmation does not state otherwise, the purchase price shall be payable in full within 30 days from the date of invoice. The statutory regulations concerning the consequences of default in payment shall apply. In particular we shall reserve the right to demand default interest amounting to 8 percentage points above base rate in accordance with § 247 of the German Civil Code [BGB].
- (5) Separate written agreement shall be required before a discount for prompt payment will be allowed.

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- (6) The customer shall only be entitled to offsetting rights if his counterclaims are found to be final and absolute in a court of law, are not contested or if they are not recognised by us. Besides which he shall only be authorised to exercise a right of retention to the extent that his counterclaim is based upon the same contractual relationship.
- (7) Drafts and cheques shall only be accepted on account of payment as well as only subject to the precondition that they can be discounted. No warranty shall be furnished that the draft is presented properly and that a draft will be protested.
- (8) If after the contract has been signed we become aware of facts concerning a significant deterioration in the contractual relationships which in accordance with best commercial judgement are capable of jeopardising our right to a counter-performance, we may demand a suitable security within a reasonable period of time up to the point in time at which we are obliged to render performance or demand that performance is only rendered concurrently against counter-performance. If the customer fails to fulfil our entitled demand or fails to fulfil it on time we may consequently withdraw from the contract or demand compensation for damages instead of performance.
- (9) If the customer is in arrears with part of his performance, we may make the entire outstanding claim payable immediately and in the event of a default in performance caused as a result of a significant deterioration in the customer's financial status, we may withdraw from the contract and / or demand compensation for damages instead of performance.

### **4. Delivery period**

- (1) Our compliance with our obligation to supply assumes that our suppliers and the customer have fulfilled their obligations to us properly and on time. We shall not furnish a procurement guarantee within the meaning of § 276 Section 1 Sentence 1 of the German Civil Code [BGB]. In so far as it is necessary for our supply obligations, that resources are dispatched to us beforehand, we shall reserve the right to withdraw from the contract in the event of fire damage, traffic congestion, power cuts and disruptions in the supply of raw materials, acts decreed by higher authorities as well as all instances of force majeure. We shall undertake to inform the customers straight away of the non-availability of our goods and refund straight away any counter-performances which may already have been made.
- (2) If a customer is in default with taking delivery of a consignment, or if he culpably breaches his other duties to co-operate, we shall consequently be entitled to demand the damages to which we are, given this, entitled including any additional expenditure which may possibly be incurred by us. We shall reserve the right to assert additional claims over and above this.
- (3) In so far as the preconditions of Section 3 have been satisfied, the risk of accidental loss or accidental deterioration of the purchased thing shall pass over to the customer at the point in time at which he finds himself in default in taking delivery of a consignment or is in default with payment.
- (4) We shall be liable in accordance with the statutory provisions provided that the underlying contract is a contract to be carried out on a fixed date within the meaning of § 286 Section 2 No 4 of the German Civil Code [BGB] or of § 376 of the German Commercial Code [HGB]. We shall also be liable in accordance with the statutory provisions, provided that as a consequence of a delay in delivery for which we are to blame the customer is entitled to claim that he is no longer interested in continuing to have the contract fulfilled.

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- (5) We shall be liable in accordance with the statutory provisions provided that the delay in delivery is based upon us being to blame for intent or gross negligence in the contract negotiations; the fault of our representatives or assistants shall be attributable to us provided that they have acted with intent or gross negligence. Provided that the delay in delivery is not based upon an intentional breach of contract for which we are to blame, our liability to pay compensation for damages shall be limited to the foreseeable damage typically occurring.
- (6) We shall moreover be liable in accordance with the statutory provisions provided that the delay in delivery for which we are responsible is attributable to a culpable breach of an important contractual obligation. In this case however the liability to pay compensation for damages shall be limited to the foreseeable damage typically occurring.

### **5. Passing of risk / Transport insurance / Packing**

- (1) Provided that it is not non-returnable packing, the packaging provided by us shall remain our unsaleable property. We shall provide the customer with our containers for three months free of charge. Once the three months have expired they are to be returned to us freight-free in perfect condition.
- (2) Since the delivery – unless agreed otherwise – has to be "ex Works", the risk of accidental loss shall pass over to the customer when the purchased thing is passed over to a haulier, freight forwarder or another person or organisation appointed to dispatch the goods. A consignment shall only be covered by a transport insurance policy in those cases in which the customer has expressly wished it. The costs incurred for such a policy shall be for the customer's account.

### **6. Liability for quality defects and legal defects**

- (1) The customer shall only be entitled to warranty rights if he has fulfilled his obligations to inspect the goods and notify defects owed by him in accordance with § 377 of the German Civil Code [HGB].
- (2) In so far as the purchased thing has a defect, the customer shall at his choice be entitled to subsequent fulfilment either by having the defect rectified or by having a new fault-free thing supplied. In the event that the defect is rectified we shall be obliged to bear all the expenditure incurred for the purposes of rectifying the defect, in particular the transport costs, the travelling expenses, labour and materials, provided that these have not been increased as a result of the purchased thing having been removed to a location other than the place of fulfilment.
- (3) If the subsequent fulfilment is unsuccessful, the customer shall consequently be entitled, as he chooses, to withdraw from the contract or to demand a reduction in the purchase price.
- (4) We shall be liable in accordance with the statutory provisions provided that the customer asserts compensation claims for damages based upon intent or gross negligence committed by our representatives or assistants. Provided that we are not accused of any intentional breach of contract, the liability for compensation paid for damages shall moreover be limited to the foreseeable damages occurring typically.
- (5) We shall be liable in accordance with the statutory provisions in so far as we are in breach of an important contractual obligation. In this case however liability for compensation for damages shall be limited to the foreseeable damage typically occurring.
- (6) In so far as the customer is entitled to a claim for compensation for damage instead of performance, our liability shall also be limited in line with Section 3 to compensation for the foreseeable damage typically occurring.

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- (7) The liability for death, personal injury or physical harm shall not be affected. This shall also apply for compulsory liability in accordance with the German Product Liability Act.
- (8) Provided that nothing has been regulated otherwise above, liability is excluded.
- (9) The period of limitation for warranty claims is 12 months counting from the passing of risk. The period of limitation in the event of delivery recourse in accordance with § 478, § 479 of the German Civil Code [BGB] shall not be affected. It is five years beginning with the return of the faulty thing.

### **7. Reservation of title**

- (1) We shall reserve the title to the purchased thing until we have received all payments from the supply contract. In the event of conduct in breach of the contract on the part of the customer, in particular if he is default with payment, we shall be entitled to take back the purchased thing. A demand by us for the return of the purchased thing shall constitute withdrawal from the contract. After taking back the purchased thing we shall be entitled to sell it. The proceeds of the sale – minus a reasonable sum to cover the costs of the sale - shall be counted towards the customer's liabilities.
- (2) In the event of a levy of execution or other third party interference our customer has to inform us straight away so that we can take legal action in accordance with § 771 of the German Code of Civil Procedure [ZPO]. In so far as the third party is not in a position to refund to us our costs of taking legal action in accordance with § 771 of the German Code of Civil Procedure [ZPO], the customer shall be liable for the shortfall incurred by us.
- (3) The customer may sell, mix, and / or process the goods as part of his proper and normal business operation. However, he shall assign to us here and now all the accounts amounting to our final invoiced amount (including VAT) to him accruing to him against his buyers or third parties from the resale, and to be more precise, regardless of whether the purchased thing has been resold without or with processing. The customer is authorised to collect the assigned accounts for as long as he fulfils his payment obligations to us. We are however authorised to revoke this authorisation and to demand from the customer that he demands that the third party pay us, if our customer fails to fulfil his payment obligations to us, and in particular if he is in default with payment or stops making his payments. If this is the case, we may demand that our customer informs us of the assigned accounts and furnishes us with all the necessary information and hands over the relevant documents and notified the debtors of the assignment.
- (4) The reservation of title shall also cover the full value of the products produced as a result of processing, mixing and combining our goods, whereby we shall be regarded as the manufacturer. If a third party's title rights continue to exist when their goods are processed together with ours, we shall consequently acquire co-ownership in proportion to the value of the purchased goods to (final invoiced amount, including VAT) to the other processed items at the point in time of processing. If the processing, mixing or combining takes place in such a way so that the customer's thing is to be regarded as the main thing, it shall consequently be regarded as agreed that the customer shall assign a proportionate co-ownership to us. The customer shall keep the sole ownership created in such a way in safekeeping for us.
- (5) The customer shall also assign to us the accounts accruing to him from a third party as a result of fixing the purchased thing to a property in order to secure our accounts against him.
- (6) We shall undertake to release the securities to which we are entitled at the customer's request to the extent that the recoverable value of our securities exceeds the accounts to be secured by more than 10%. The selection of the securities to be released shall be incumbent upon us.

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### **8. Joint and several liability**

- (1) An additional liability for compensation paid for damages other than that provided for in Number 6– without taking into consideration the legal nature of the asserted claim. This shall apply in particular for compensation claims for damages resulting from us being at fault when the contract is signed, on account of other breaches of duty or on account of tortious claims for compensation for property damage in accordance with § 823 of the German Civil Code [BGB].
- (2) The limit in Section 1 shall also apply in so far as the customer demands compensation for expenditure spent in vain instead of asserting a compensation claim for damages instead of performance.

### **9. Place of jurisdiction and place of fulfilment**

- (1) Provided that the customer is a registered trader, the place of jurisdiction shall be the courts having jurisdiction where our principal place of business is located. We are however entitled to take legal action against the customer at the courts where he has his place of residence as well.
- (2) Provided that the order confirmation states nothing to the contrary, our principal place of business is also the place of performance. The place of fulfilment for the customer's obligations is Essen.