

§ 1 Applicability

1. Our Standard Delivery Terms have exclusive application. Terms of the Purchaser which are different from these Standard Delivery Terms, and which we do not expressly acknowledge in writing, shall not be binding even if we do not expressly reject them. Any order placed by the Purchaser shall be deemed an acknowledgement of these Standard Delivery Terms. Our Standard Delivery Terms also apply if we make delivery without reservation despite knowledge of differing or contrary terms of the Purchaser.

2. Our Standard Delivery Terms only apply to persons who, in concluding the contract, are acting in their business capacity (entrepreneurs within the meaning of section 310 German Civil Code - BGB), to public legal entities and special funds under public law.

3. The version of these Standard Delivery Terms as applicable from time to time shall serve as a framework agreement (section 305 Abs. 3 German Civil Code - BGB) and also applies to future offers and contracts for the sale or supply of moveable goods with the same customer without our having to refer the Purchaser to them in each individual case. In this event we shall inform the Purchaser without undue delay of any amendment to these Standard Delivery Terms.

§ 2 Conclusion of Contract; Content of Contract

1. Our offers are non-binding unless they are expressly marked as binding or they contain a binding deadline by which an offer must be accepted.

2. Our written order confirmation shall govern the scope of the delivery. All agreements made in connection with the performance of the contract shall not become part of the contract unless made in writing.

3. Any changes to the technical design of the ordered products according to custom and usage shall be permitted unless such changes cause a substantial change in function or are unacceptable for the Purchaser.

4. Other than guarantees expressly agreed upon in the contract, there are no guarantees whatsoever.

§ 3 Prices and Terms of Payment

1. Unless otherwise provided in the order confirmation, our prices quoted are ex works. The Purchaser shall be invoiced separately for packing, shipping, insurance and customer duties, etc. We shall have the right to invoice partial shipments separately, to the extent we are entitled to make such partial shipments pursuant to § 4 para. 2 above.

2. We reserve the right to increase our prices if, after conclusion of the contract, there is an increase in the costs of production, in particular by reason of tariff agreements or increases in the costs of material. Such increases in costs shall be substantiated to the Purchaser upon request. The provisions in this paragraph 2 shall not apply if there are less than 6 weeks between the conclusion of the contract and the agreed delivery date.

3. The statutory value-added-tax is not included in the prices; it will be listed separately in the invoice at the statutory rate on the invoice date.

4. Deduction of discounts shall be subject to separate written agreement.

5. Unless otherwise provided in the order confirmation, the payment shall be made without discount or any other deduction within 14 days from the receipt of an invoice in case of receipt of an invoice, however not later than 30 days from date of delivery.

6. If the Purchaser defaults on payment, we shall have the right to charge Default Interest at the Statutory Rate (section 288 Abs. 2 German Civil Code – BGB). If we are able to prove higher damages arising from the default, we shall have the right to claim such damages. However, the Purchaser shall have the right to prove that we have not suffered any damages as a result of the payment default or that the damages suffered are substantially lower.

7. The Purchaser shall have a right of set-off only if his counterclaim is the subject of final

judgement, is uncontested or acknowledged by us. The Purchaser shall not have a right of retention based on disputed counterclaims which are not the subject of a final judgement.

§ 4 Period of Delivery, Delay in Delivery, Inability to Deliver

1. Scheduled periods of delivery and delivery dates shall be subject to the condition that we receive complete and timely deliveries.
2. We shall have the right to make partial deliveries in a reasonable scope.
3. The beginning of the period of delivery shall be subject to the timely and proper performance of Purchaser's obligations. If these obligations are not met in time, the period of delivery shall be reasonably extended. The period of delivery shall also be reasonably extended in case its non-compliance is due to force majeure, e.g. war, or any similar incident, e.g. strike.
4. Any period of delivery or delivery date shall be regarded as complied with if, before expiration, notice of readiness for dispatch or pickup was given or the products left the factory or warehouse or were delivered to a carrier or a forwarding agent or to another person consigned with the transport.
5. If delivery is delayed for reasons for which we are responsible, then the Purchaser shall – if he furnishes prima facie evidence of the damage incurred – have the exclusive right to demand lump sum default compensation in the amount of 0.5 % of the order value for each full week of delay, but no more than 5 % of the order value. We reserve the right to demonstrate to the Purchaser that no damage or substantially less damage occurred as a result of the delay in delivery. Claims of the Purchaser for damages based on delay in delivery as well as damages in lieu of performance in excess of the afore-mentioned limit are excluded in any case of delayed delivery.
6. If we are responsible for the delay of delivery, the Purchaser shall be entitled to withdraw from the contract after having granted a reason-able extension of time for performance and such extension has expired unsuccessfully. Upon our request, the Purchaser shall inform us within a reasonable period of time whether he withdraws from the contract for reason of the delay or insists on delivery.
7. To the extent delivery is impossible and we are responsible for such impossibility, the Purchaser shall be entitled to damages. Such damages shall be limited to 10 % of the value of those products which cannot be delivered due to impossibility. The Purchaser's right to withdraw from the contract shall remain unaffected.
8. The limitation of liability pursuant to paragraphs 5 to 7 above shall not apply if the delay or impossibility is due to intention or gross negligence or there is damage to life, body or health.
9. The limitation of the right to withdraw from the contract as laid down in paragraph 6 above shall not apply if the Parties agreed on a commercial transaction for delivery by a fixed date.

§ 5 Passing of Risk

1. Unless otherwise provided in the order confirmation, delivery shall be ex works.
2. Upon written request of the Purchaser, we shall obtain shipping insurance to protect the delivery against the customary transport risks; the costs incurred shall be born by the Purchaser.
3. If the Parties have agreed on shipment of delivery, the risk of accidental loss or accidental deterioration of the delivered products shall, also in case of freight paid, pass to the Purchaser as soon as the products have been delivered to the person designed to execute the delivery or have left our warehouse for dispatch.
4. Should compliance with performance provide that we are only obliged to make the consignment ready for pickup at our place and the consignment has been made ready for dispatch or pickup and pickup is delayed for reasons which we are not responsible for, the risk of accidental loss or accidental deterioration of consignment shall pass to the Purchaser upon receipt of our notice of readiness for dispatch or pickup by the Purchaser.

§ 6 Reservation of Title

1. We hereby reserve title to our delivered goods. Title shall pass to the Purchaser only after receipt of payment in full. In respect of goods which the Purchaser purchases from us in connection with its business activities, we reserve title until all of our claims against the Purchaser arising out of a business relationship have been settled.

2. The Purchaser shall immediately inform us in writing of attachments or other encroachments of third parties so that we can bring suit pursuant to section 771 of the German Code of Civil Procedure (ZPO). If the third party is not able to reimburse us for the court costs of such a suit, then the Purchaser shall be liable for the losses we incur.

3. The Purchaser shall have the right to resell the delivered goods in the ordinary course of business; however, the Purchaser hereby already assigns to us all receivables in the amount of the invoice amount (including value-added-tax) which he has against his customers or third parties, without regard as to whether the goods have been resold without or after processing. We hereby already accept such assignment. The Purchaser shall remain entitled to collect accounts receivable following assignment. Our right to collect accounts receivable ourselves shall not be affected thereby. We agree, however, not to collect the accounts receivable so long as the Purchaser complies with his payment obligations out of the collected proceeds towards us, is not in default of payment to us and no application for the opening of insolvency proceedings has been filed or suspension of payments has occurred. As soon as we can collect the assigned accounts receivable, the Purchaser shall upon our request be obliged to notify us of the assigned accounts receivable and their debtors, to give us all details necessary for collection, to deliver the related documents to us and to notify the debtors (third parties) of the assignment.

4. The Purchaser is entitled to use and process/transform the products in the proper course of business. The processing or reconstruction of the delivered goods by the Purchaser shall always be undertaken for us. Should delivered goods be processed with other objects which do not belong to us, then we shall acquire co-ownership of the new product in the proportion of the value of the delivered goods to the other processed objects at the time of processing. The same shall apply to the products resulting from the processing as applies to the goods delivered subject to reservation of title.

5. In case the delivered goods are inseparably mixed with other objects which do not belong to us, we shall acquire co-ownership in the resulting object in the proportion of the value of the delivered goods to the other mixed objects at the time of mixing. In case the mixing takes place in such a fashion that the delivered goods must be considered to be the principle object, agreement is deemed that the Purchaser shall transfer to us co-ownership proportionately. The Purchaser shall have custody of the resulting sole ownership or co-ownership for us.

6. The Purchaser hereby also assigns to us, as security for our accounts receivable, the accounts receivable which he obtains against third parties through the combination of delivered goods with real property. We hereby already accept such assignment.

7. In the case of a non-contractual behaviour of the Purchaser, especially in the case of any delay in payment, we shall have the right to take back the goods delivered subject to reservation of title, and the Purchaser shall be obliged to hand out the goods to us. The return or attachment of reserved goods does not constitute our withdrawal from the contract. In case we take the goods back, we shall have the right, after having set a reasonable time limit, to realise the delivered goods at our free disposal. The revenue less the reasonable cost of realisation shall be set off against our claims.

8. If certain measures are required to take for the validity of the retention of title or the assignment at the place where the delivered goods are situated after delivery in case of export sales, the Purchaser is obliged to inform us of the required measures and to take such measures at his own expense. If retention of title or any other of the above rights is out of consideration in the place where the delivered goods are situated after delivery, all appropriate steps shall be taken by the Purchaser at his own expense in order to save the delivered goods in a way which is most akin to the securities mentioned under § 6 above.

9. We undertake to release the securities provided to us at the Purchaser's request if and to the extent that their value exceeds the value of all claims resulting from the business transaction with the Purchaser by more than 20 percent.

§ 7 Warranty for Defects

1. If the Purchaser is a merchant (Kaufmann), his warranty rights are subject to the condition that he has complied with his duties of inspection and notice under sections 377 et seq. of the German Commercial Code (HGB). This shall apply mutatis mutandis to entrepreneurs (Unternehmer). Any notice of defects shall be given in writing. Notice of obvious defects shall be given within a period of 8 calendar days following receipt of the delivered goods. The same shall apply if a defect which is not obvious first, is detected by the Purchaser.

2. We shall, at our option, mend a defect in the delivered goods or accept return of the goods and deliver a replacement (= supplementary performance - Nacherfüllung). We shall be entitled to refuse supplementary performance if this is possible only with disproportionately high cost or disproportionately high expenditure and the other kind of supplementary performance would not entail material disadvantages to the Purchaser.

3. In the event supplementary performance is unsuccessful or finally refused by us, the Purchaser shall be entitled to withdraw from the contract or claim reduction of the delivery price. Any further claims of the Purchaser, regardless of their legal basis, are excluded. In particular, we are not liable for any damage which occurred not to the delivered goods; in particular we are not liable for lost profit or any other pecuniary loss.

4. The limitation of liability set forth in paragraph 3 above shall not apply if defects were caused by us on intention or gross negligence or if there is damage to life, body or health or if a material contractual obligation was breached. Material contractual obligations are obligations the compliance of which shapes the contract and which the Purchaser may rely upon. Should we negligently breach a material contractual obligation, our liability shall be limited to the damages which are reasonably foreseeable and typical for the contract.

5. Claims based on defects shall not exist in case the delivered goods deviate from the agreed quality to an only minor extent, in case of only minor impairment of use, usual wear and tear or damage which occurred after passing of risk, due to wrong or negligent treatment, excessive use etc. Should the Purchaser or any third party apply changes or repair work inappropriately, claims based thereupon or on the consequences resulting therefrom shall not exist.

6. Claims for defects shall become statute-barred after twelve (12) months. This shall not apply in case of intention or gross negligence, if there is damage to life, body or health or in case of fraudulent concealment of the defect. The limitation period shall begin upon fulfilment of our obligation to perform (handover for dispatch, notice of readiness for pickup).

7. Any claims of the Purchaser for payment of expenditures incurred by supplementary performance are excluded to the extent that such claims increase for reason that the delivered goods were subsequently transported to another place than the business place of the Purchaser unless such transport corresponds to the agreed use of the delivered goods.

8. Recourse claims of the Purchaser towards us in accordance with section 478 of the German Civil Code shall not exist unless the Purchaser reached a respective agreement with his customer and such claims do not exceed the statutory claims based on defects. Paragraph 7 above shall apply mutatis mutandis as regards the extent of any recourse claim.

§ 8 General Limitation of Liability

1. Our liability shall be exclusively and finally determined in accordance with these Standard Delivery Terms. Any further claims for damages, regardless of their legal basis, are excluded. The foregoing exclusion of liability shall not apply if intentional misconduct, gross negligence or breach of a material contractual obligation within the meaning of § 7 paragraph 4 above is attributable to us or our agents. In case of slightly negligent breach of any material contractual obligation, our liability is limited to the foreseeable damage.

2. The provisions in paragraph 1 above shall not apply to our liability under sections 1 and 4 of the German Product Liability Act. However, damages shall be limited to the damage which is foreseeable and typical for the contract.

3. To the extent that our liability is excluded or limited, this shall also apply to the personal liability of

our employees, representatives and agents.

§ 9 Return of Goods

Return of goods shall be subject to prior agreement and our written consent. Return deliveries for which we would pay the costs will be not accepted. Special design, partly used goods and goods which we cannot resell are exempted from the opportunity of a return. In case of a return delivery against credit note we will deduct a handling fee of 20 %.

§ 10 Venue, Place of Performance and Governing Law

1. As far as the Purchaser is a merchant (Kaufmann), a public entity or a public institution, the exclusive venue shall be Eisenberg, however, we shall be entitled to bring an action before the court where the Purchaser has his principal place of business or before any other court which is competent by statute.

2. Unless otherwise provided in the order confirmation, the place of performance shall be our principal place of business.

3. The laws of the Federal Republic of Germany shall apply to the legal relationship in addition to these Standard Delivery Terms. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

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