

# Terms and Conditions of Delivery and Payment

## § 1 Scope of Application

- (1) Our Terms and Conditions also apply to future contracts.
- (2) We expressly reject the applicability of other terms and conditions, especially safeguard clauses against the agreed simple retention of title.
- (3) The contract language is English.
- (4) Business relationships with private individuals are excluded.
- (5) Contracts become legally binding upon receipt of the order confirmation.

## § 2 Offer and Conclusion of Contract

- (1) We will honour a concrete offer for a period of 14 days from the date it was prepared. If acceptance of an offer is delayed, the order is considered placed only after we have confirmed this in writing.
- (2) If the customer's order deviates from our offer or if it contains additions and supplementary agreements, the order is considered placed only after we have confirmed this in writing.
- (3) Tender documents, drawings, descriptions, samples and quotations may not be shared, published, reproduced or made available to third parties in any other way without our consent. Documents are to be returned at our request without withholding any copies.

## § 3 Prices

- (1) Unless otherwise agreed, the prices agreed at the time of order placement are the prices to be paid by the customer.
- (2) Unless otherwise agreed, the agreed prices are net, excluding packaging costs, ex works from our factory in Creußen.
- (3) If there are more than four months between order placement and the agreed delivery of the goods, we are entitled to raise the price to account for increased production costs, if applicable. In such cases the customer is entitled to withdraw from the contract if the price increase between the price calculated at the time of order placement and the price calculated at the time of delivery significantly exceeds the increase in the general cost of living in this period.
- (4) The customer must pay VAT on the agreed net prices in the amount applicable on the day of delivery.
- (5) Changes and additional services requested by the customer after conclusion of contract will be invoiced separately. The same applies to overtime work and to work done at night, on Sundays and on public holidays due to circumstances that were unknown at the time the contract was concluded and for which the customer is responsible. Customary surcharges will be applied to the agreed price in such cases.

## § 4 Place of Performance, Shipping Costs

- (1) The place of performance for our goods or services is our head office in Creußen, where the customer has to pick up the goods at his own expense.
- (2) If the customer wants the goods to be sent to a different location, he shall bear the resulting transport costs and risk even if the good are transported with our own vehicles. We shall determine the shipping method and route if the customer does not provide any explicit instructions. In this case the place of performance is always our warehouse from which the shipping of goods takes place.
- (3) At the request of the customer, shipments are insured in his name and on his account.

## § 5 Partial Performance and Delay in Delivery

- (1) We are entitled to make partial deliveries or to perform partial services.
- (2) In these cases the customer must pay for the partial delivery or service performed if the partial performance can be utilized economically.
- (3) The customer may submit a written request to us two weeks after a tentative completion/delivery date has expired that the delivery be made/service be performed within a reasonable deadline. Our delivery/service is considered delayed upon receipt of this written reminder.

## § 6 Right of Withdrawal

- (1) We are entitled under the exclusion of damage claims to withdraw from the contract if a supplier with whom we have concluded a congruent hedging transaction fails to deliver on his supply obligation at no fault of our own and we have made all reasonable efforts to procure the raw materials we need to fulfil our order.
- (2) If circumstances become known after the conclusion of the contract that give rise to the lack of credit worthiness or insolvency of the customer (e.g. enforcement attempts, suspensions of payments, etc.) and as a result significantly endanger our entitlement to remuneration, we are entitled to demand advance payment or a security deposit. We are also entitled to demand a security deposit in case of unfavourable official credit reports or negative reports from a similar institution.  
We are entitled to withdraw from the contract if the customer is unable or unwilling to provide advance payment or a security deposit in spite of being requested to do so.
- (3) We are likewise entitled to withdraw if the customer provides false information about his creditworthiness that is significant in nature.
- (4) Delivery and supply delays that we are not responsible for and which make performance significantly more difficult or impossible for us, e.g. force majeure, labour disputes, lockouts, government regulations, etc., entitle us to withdraw from the contract.

## § 7 Retention of Title

- (1) The delivered or manufactured goods remain our property until payment of the agreed price including all incidental claims has been made in full.
- (2) We further reserve the title to all goods that we deliver or manufacture until our total receivables – this also applies to future and conditional claims – from the business relations have been paid in full. This also applies even if the purchase price for specific deliveries of goods designated by the customer has already been paid since the retained property serves as a security for our balance claims. The customer is entitled to resell the retained goods in the course of ordinary business. The customer already assigns the claims arising from the resale of retained goods by way of security to us. We accept the assignment and authorize the customer to collect the claims assigned to us for his own account in his own name. We are entitled to revoke this collection authorization if the customer is in arrears with claims from the current business relationship. The customer is then obliged to provide us with any information necessary for the collection of the claims and to transfer the related original documents to us. If the value of the existing securities (retained goods and co-ownership and assigned claims) exceeds the value of our receivables due by more than 20%, we are obliged to release securities at our own discretion at the request of the customer.

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- (3) If the customer is in default with the payment of a claim for a specific set of goods in whole or in part, then the customer loses the right to use these goods. We are then entitled, after notifying the customer with a second reminder of the loss of the usage right, to demand the return of these goods for safekeeping until the associated purchase price including any incidental claims has been paid in full. The assertion of the right to have the goods returned as part of the retention of title is not considered withdrawal from the contract. We agree to return the held goods to the customer at his expense after they have been paid in full. The customer bears the risk of loss or damage to the goods during the period of safekeeping, provided such loss or damage does not result due to our own fault. The customer bears the costs of safekeeping.
- (4) In the event of access by third-parties – in particular by a bailiff – to the retained goods, the customer must refer to our ownership of property and immediately inform us of this access. The customer bears any costs and damages arising as a result of the necessary demand for release, provided they were not caused by us.

### § 8 Warranty

- (1) Warranty claims due to obvious defects expire if the customer fails to notify us of these immediately. Section 377 of the German Commercial Code (HGB) applies; the notification of defects must be made in writing.
- (2) We reserve the right to correct defects in our goods and services through subsequent performance. Subsequent performance may be done multiple times.

If the subsequent performance fails after a reasonable period of time, the customer may withdraw from the contract provided the legal requirements for this are met or reduce the agreed compensation or make claims for damage under the limitation of liability in section 9 if defects were culpably caused.

- (3) Warranty claims by the customer expire within one year after the acceptance of our performance. This does not apply to damage claims by the customer due to defects for which we are responsible that seek compensation for injury to body or health or that are based on gross negligence on our part or one of our agents. The statutory warranty period applies here; the extent of our liability is governed by section 9 of these Terms and Conditions.
- (4) Used goods are delivered without any warranty. This does not apply to damage claims by the customer due to defects for which we are responsible that seek compensation for injury to body or health or that are based on gross negligence on our part or one of our agents. The statutory warranty period applies here; the extent of our liability is governed by section 9 of these Terms and Conditions.

### § 9 Liability and Damage Compensation

- (1) Our liability
  - does not cover atypical contractual damages if the reason for their cause is gross negligence by us or our officers;
  - covers gross negligence on the part of vicarious agents up to an amount no greater than that of the agreed compensation for our respective goods and/or services;
  - does not cover breach of duty on our part, our officers or our agents due to simple negligence.
- (2) The liability limitations in para. 1 do not apply if a cardinal obligation has been breached or in the event of injury to life, body and health. Cardinal obligations are obligations whose fulfilment is what makes proper execution of the contract possible in the first place and on which the contractual partner can readily rely in terms of their compliance.
- (3) If we refuse in writing to fulfil damage claims while also stating the reasons for this, we shall be freed from our obligation to provide compensation if the customer does not file a complaint against us within a period of one year. The period begins as soon as we give written notice of the legal consequences of failure to act within this period. Statutory limitations are not extended by this agreement.

### § 10 Damage Compensation

In the event we have a right to claim compensation for damages resulting from non-fulfilment, we are entitled to claim 30% of the agreed net order value as lump-sum damage compensation without proof of the actual damages. The amount of compensation will be higher or lower if we are able to prove a higher amount or the customer a lower amount of damage, respectively.

### § 11 Offsetting and Right of Retention

- (1) Offsetting against our claims is excluded if the counterclaims have not been legally established or are not undisputed by us.
- (2) A right of retention cannot be asserted by the customer.

### § 12 Jurisdiction

- (1) Bayreuth is the court of jurisdiction for both parties for any disputes arising from this contract and legal relations associated with it; at our discretions, we may also choose the competent court at the customer's place of business.
- (2) Bayreuth is also the court of jurisdiction in the event that the customer changes his place of residence or general place of business to a place outside of the Federal Republic of Germany and the laws that governs it or if his general place of residence or location is unknown at the time the complaint is filed.
- (3) This contract is subject to the laws of the Federal Republic of Germany under the exclusion of the United Nations Convention on Contracts for the International Sale of Goods.