

## § 1

### General information – area of validity

- (1) Our terms of sale apply exclusively to all transactions; we do not acknowledge additional or contrary terms, unless we have previously agreed to them in writing.
- (2) Our terms of sale also apply if we make the delivery to the purchaser without any reservation, although we are aware of conditions contrary to and / or differing from ours.
- (3) All agreements made between us and the purchaser for the purpose of fulfilling this contract, are documented in writing within this contract.
- (4) Our terms of sale only apply to companies in the context of § 310, Paragraph 1 BGB German Civil Law Code.
- (5) Our terms of sale also apply to all future transactions with the purchaser.

## § 2

### Quotation – quotation materials

- (1) If the order qualifies as an offer in accordance with § 145 BGB, we can accept this offer within two weeks.
- (2) We retain all ownership rights and copyrights applicable to all illustrations, drawings, estimates and all other related documentation. This also applies to those documents classified as “confidential”. Before transferring these to third parties, the purchaser requires our express written permission.

## § 3

### Prices – payment conditions, packaging, shipping

- (1) Provided that nothing to the contrary is mentioned in the order confirmation, our prices are indicated as “EXW” (INCOTERMS 2000) prices, including packaging; if a particularly elaborate packaging is needed, the customer is responsible for these costs separately.

- (2) We reserve the right to change our prices in a manner appropriate to increases or decreases in our costs following the conclusion of the contract, especially as a result of pay tariff agreements or changes in material costs; we will offer the purchaser evidence of these changes upon request.
- (3) The minimum value per order is € 150, - for trans-national commerce (land borders), for overseas orders € 1.000, - (sea borders), provided that no special agreements have been made. We reserve the right to over- or undersupply the purchaser by 10% if this is necessary because of packing.
- (4) The general sales tax is not included in our prices; the general sales tax will be invoiced according the law at the applicable percentage on the day of invoicing and shown separately on the invoice.
- (5) We pack all materials in the standard manner with our choice of packaging materials, taking into account the means of transportation (by sea, air, or land), and is included in the offer. In the case of special requests, the purchaser bears the costs for all packaging.
- (6) We are free to choose the means of transportation, if no other special agreements have been made. The purchaser bears all costs for a special request regarding the method of shipment; this also applies to express (non-standard) and next-day shipping, even if we pay the initial freight charges.
- (7) Upon the purchaser’s request, we will cover the shipment by a transportation insurance policy; the purchaser carries all costs for this insurance.
- (8) Unless nothing to the contrary is indicated in the purchase order, the net purchase price (without deductions) is due within 30 days from the date of invoice. The applicable statutory rules are effective in the case of delayed payment.
- (9) The deduction of a discount requires a separate written agreement.

- (10) The purchaser can only charge us if his counterclaim has been absolutely established, uncontested or acknowledged by us. In addition, the exercise of the right of retention is authorised provided the counterclaim is based on the same contractual relationship.

#### **§ 4 Passing of risk**

The risk is passed to the purchaser upon the transfer of the goods to the forwarding agent or carrier, at the latest, however, upon leaving our premises, unless other conditions have been expressly agreed upon.

#### **§ 5 Delivery time**

- (1) The commencement of the delivery time indicated by us requires the clarification of all technical questions.
- (2) In addition, the compliance with our delivery obligation requires the timely and proper fulfilment of the obligations on the part of the purchaser. We reserve the right to defend against non-fulfilment.
- (3) If the purchaser delays in the acceptance of the goods, or culpably violates other joint obligations, we are then authorised to claim the payment of damages, including additional expenses resulting from this violation, for the resulting loss. Additional claims are reserved.
- (4) If the requirements from Paragraph 3 are met, the risk of accidental loss or the accidental deterioration of the purchased item passes to the purchaser as soon as he is late, either in acceptance or in payment.
- (5) We are liable in accordance with the relevant statutory regulations, provided the purchase contract on which the transaction is based indicates the sale at a fixed point in time, in the context of § 286 BGB Paragraph 2, No. 4 German Civil Law Code, or § 376 HGB German Commercial Code. Only in case we confirmed the delivery date in our declaration of acceptance / offer expressly as "fix and binding", delivery must be carried out latest or solely on this date ("Fixgeschäft"). We are also liable in accordance with the statutory regulations, insofar as the purchaser is authorised to assert that his interest in the continued fulfilment of the contract is no longer valid as a result of a delay in delivery for which we are responsible.

- (6) We are also then liable in accordance with the statutory regulations, if the delay in delivery arises from an intentional or grossly negligent contractual violation on our part for which we bear responsibility; if our representatives or assistants are responsible for the same, we are then liable for them. If as the delay in delivery does not arise from an intentional contract violation on our part, the liability for damages is limited to the predictable, typically occurring damages.
- (7) We are also then liable in accordance with the statutory regulations, if as the delay in delivery arises from a culpable violation of a major contractual obligation; in this case, however, the liability for damages is limited to the predictable, typically occurring damages.
- (8) Further legal claims and rights of the purchaser are reserved.

#### **§ 6 Liability for defects**

- (1) Claims of defects on the part of the purchaser require that he has fulfilled his obligations of enquiry and reproof in accordance with § 377 HGB German Commercial Code. For avoidance of consequential damage caused by a defect, the purchaser carries out appropriate test procedures at least with random samplings, before using the delivered goods.
- (2) Slight discrepancies in the colour of our products are not considered a defect, and therefore a complaint is not authorised.
- (3) Insofar as a defect on the purchased goods exists, we are authorised to choose of subsequent performance, either in the form of elimination of the defects or delivery of a new object free of defects. In the case of the elimination of defects, we only bear those costs up to the amount of the purchase price.
- (4) If the subsequent performance is unsuccessful, the purchaser is authorised to either withdraw from the contract or claim a reduction in the purchase price.
- (5) We are liable in accordance with the relevant statutory regulations, provided the purchaser asserts claims for damages

arising from intent or gross negligence, including intent or gross negligence on his part of our representatives or staff. If as we are not accused of an intentional contract violation, the liability for damages is limited to the predictable, typically occurring damages.

- (6) We are liable in accordance with the relevant statutory regulations, if as we culpably violate a major contractual obligation; in this case, however, the liability for damages is likewise limited to the predictable, typically occurring damages.
- (7) Insofar as the purchaser is entitled to damages instead of repeat performance, our liability for damages is also limited in the context of Paragraph 3 to the predictable, typically occurring damages.
- (8) The liability for culpable injury to life, body or health remains untouched; this also applies to compulsory liability in accordance with the Product Liability Law.
- (9) Insofar as nothing to the contrary has been established within this agreement, the liability is excluded.
- (10) The status of limitations for claims of defects is 12 months, calculated from the date of the passing of the risk.
- (11) The limitation period of claims of defects according to §§ 478, 479 BGB (German Civil Law Code) remains unchanged; the claim is limited to 2 years, counted from the date of delivery.
- (12) All product information supplied by us is made to the best of our knowledge. No warranty or guarantee or legal responsibility is implied. The information only refers to our products in our product information and does not relate to the use of our products with any other product and process.
- (13) We take no responsibility for damage to property or equipment or third parties as a result of misuse or miss-handling of our products. Purchasers are encouraged to conduct appropriate testing before using our products. The purchaser must make sure that the use of our products is done according to all applicable laws.

### **§ 7 Overall liability**

- (1) Further liability for damages as designated in § 6 is – regardless of the legal nature of the asserted claim – excluded. This ap-

plies especially to claims for damages which arise from culpability at the conclusion of the contract, due to other violations of the respective obligations, or to illegitimate claims for property damages in accordance with § 823 BGB (German Civil Law Code).

- (2) If liability for damages on our part is excluded or limited, this also applies to the personal liability for damages on the part of our employees, representatives and servants.

### **§ 8**

#### **Assurance of retention of ownership**

- (1) We reserve the ownership of the purchased goods until all payments resulting from the business transaction with the purchaser have been received. If the purchaser behaves in a manner contrary to the contract (this especially applies to a delay in payment), we are authorised to take back the purchased goods. This does not indicate our withdrawal from the contract unless we had made an expressly written statement to the contrary. The seizure of the purchased goods by us always signifies a withdrawal from the contract. After we have taken back the purchased goods, we reserve the right to utilise them as we see fit; the respective proceeds will be added to the purchaser's liabilities – minus reasonable costs of utilisation.
- (2) The purchaser is obligated to treat the purchased goods with the proper care; he is especially obligated to insure them sufficiently to the new value against damages from fire, water, and theft.
- (3) In the case of distraint or other intervention by third parties, the purchaser must inform us immediately in writing, so that we can file for legal action in accordance with the Code of Civil Procedure § 771 ZPO. If the third party cannot reimburse us for the legal costs and additional expenses in accordance with the Code of Civil Procedure § 771 ZPO, the purchaser is liable for our expenses.
- (4) The purchaser is authorised to resell the goods through the proper channels; however, at this point, he makes all assignments to us for the amount of the final invoice amount (including VAT) which he receives from the resale against his sub pur-

chaser or other third parties, and this regardless of whether the purchased goods have been sold without or after further processing. The purchaser is still authorised to collect this claim, even after the assignment. Our authorisation to demand this claim remains hereby untouched. We are obligated, however, not to demand this claim as long as the purchaser fulfils his obligation to pay us a share of the accrued revenues without delay, and especially does not apply to bankruptcy, settlement or insolvency, or if the payments have been cancelled. If this is in fact the case, however, we can demand that the purchaser inform us of the assigned claims and who owes them, and provides all information necessary for the collection, including handing over the respective documentation and informing the debtor (a third party) who owes the payments.

- (5) The processing or re-shaping of the purchased goods by the purchaser will always be carried out for us. If the purchased goods are processed along with other objects not belonging to us, we acquire the co-ownership of the new item in ratio of the value of the original goods (end amount on the invoice, including VAT) to the other processed objects at the time of processing. For the item produced as a result of this processing, the same applies as to the purchased goods delivered under reserve.
- (6) If the purchased goods are combined inseparably with other objects not belonging to us, we acquire the co-ownership of the new item in ratio of the value of the original goods (end amount on the invoice, including VAT) to the other combined objects at the time of combining. If the combining takes place in such a manner so that the purchaser's item is the main com-

ponent, it is considered agreed that the purchaser transfers to us certain shares of co-ownership. In this way, the purchaser stores the sole property or joint property for us.

- (7) We are obligated to release the collateral entitled to us at the purchaser's request, provided the realisable value of our collateral exceeds the claims to be secured by more than 10 %; we reserve the right to choose which collateral we release.

## § 9

### Jurisdiction – place of fulfilment

- (1) Applicable law is that of the Federal Republic of Germany; the applicability of UN sales law is excluded.
- (2) If the purchaser is a commercial trader, the location of our company headquarters has jurisdiction over all disputes; we are authorised, however, to bring action against the purchaser at the jurisdiction for his place of residence.
- (3) The supplier is referred to § 26 Paragraph 1 Federal Data Protection Act according to which we store the supplier's data that is usual for mutual business transactions and that we require internally.
- (4) If nothing to the contrary is indicated on the purchase order, our company headquarters is the place of fulfilment. Transport clauses in the order confirmation, unless explicit note with different wording, generally do not serve to determine a different place of fulfillment; this also applies to INCOTERMS.
- (5) Should single paragraphs of these terms of conditions be invalid or missing or will be invalid in future, all other terms remain valid.

We are not liable for misprints.

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