

## GENERAL TERMS AND CONDITIONS OF DELIVERY AND SERVICE

### 1. General, Scope

- 1.1 These General Terms and Conditions of Delivery and Service (hereinafter referred to as "Terms") are an integral part of the contract and shall apply exclusively to the relationship with the customer.
- 1.2 These Terms shall apply exclusively vis-à-vis enterprises, legal persons under public law and special funds under public law within the meaning of section 310 para. 1 of the German Civil Code (*Bürgerliches Gesetzbuch*, hereinafter: *BGB*).
- 1.3 Any deviating or conflicting terms will not be accepted by us, unless we explicitly agree to them in writing.
- 1.4 These Terms shall also apply to any future business between the parties, as well as where we deliver the goods in knowledge of any deviating or conflicting terms.

### 2. Offer, Contract Conclusion, Offer Documents

- 2.1 All offers submitted by us to the customer shall be non-binding.
- 2.2 The order of a customer shall constitute a binding offer to us for the conclusion of a contract.
- 2.3 A contract shall only be concluded, when we accept the customer's order in writing (e.g. by letter, fax or e-mail).
- 2.4 If we do not declare acceptance of an order of the customer in writing within 14 days, the customer shall no longer be bound to their order or, as the case may be, their offer.
- 2.5 Any collateral agreements need to be confirmed in writing by us, in order to be valid.
- 2.6 We reserve all ownership and copyrights in any pictures, drawings, calculations and any other documents provided to the customer by us; such may not be made accessible to any third parties. This shall particularly apply to such written documents as are marked as confidential. Prior to their disclosure to third parties the customer shall require our explicit written consent. If necessary, we will additionally conclude a separate written non-disclosure agreement with the customer.

### 3. Information and Cooperation Obligations of the Customer, Damages for Delayed Material Provision

- 3.1 The customer shall prior to the conclusion of the contract inform us in writing, if the execution of an assignment or the creation of a plant requires any safety equipment beyond the accident prevention regulations.
- 3.2 In case of deliveries abroad, the customer shall prior to the conclusion of the contract inform us of the accident prevention and safety regulations applicable in the relevant country and make such regulations accessible for us.
- 3.3 In case of deliveries to countries of the European Union, the customer shall immediately upon conclusion of a contract provide their value added tax identification number as well as any other information required for the execution of the transaction. Furthermore, the customer shall in case of collection by the customer immediately confirm in writing, as soon as the goods have arrived in a country of the European Union (outside of Germany).
- 3.4 If for the execution of an assignment we require the provision of material by the customer (raw materials, parts to be machined etc.), the customer shall provide such material at the agreed time. In case of delayed provision of materials, we shall be entitled to claim compensation from the customer for all damages incurred due to machine downtimes. To this end, as from the third working day the machine hourly rate shall be multiplied with the waiting time incurred. The customer may prove to us that no damage or substantially lower damage was caused to us.
- 3.5 In case of seizures or any other third-party interventions, the customer shall immediately notify us in writing, so that we may file a claim according to section 771 of the German Code of Civil Procedure (*Zivilprozessordnung*, ZPO). To the extent that such third party is not able to refund judicial and extra-judicial costs for a claim under section 771 ZPO, the customer shall be liable for such default.

### 4. Time Limits for Delivery/Service, Packaging Material, Deliveries Abroad

- 4.1 Time limits for delivery and service as well as due dates for delivery and completion shall only be binding on us, to the extent they have been explicitly confirmed by us in writing.
- 4.2 Any time limits for delivery and service set forth by us shall begin upon receipt of the information to be provided by the customer (technical drawings, documents, plans etc.) and/or provision of materials (raw materials) required by us for the execution of the customer's assignment or, as the case may be, order.
- 4.3 The customer is aware of that we are no longer bound to comply with the time limits for delivery and service initially provided by us, if the customer upon conclusion of the contract modifies and/or amends the assignment in terms of content and/or quantity. Nor are we bound to comply with the due dates for delivery and/or the time limits for delivery and service set forth by us, if the customer does not fulfil the customer's cooperation obligations under section 3.4 hereof.
- 4.4 If the customer is in default of acceptance or if the customer violates any other cooperation obligations (see section 3.4 hereof), we will be entitled to claim damages for the damage incurred, including any additional expenses. In this case the risk of accidental loss or any accidental deterioration of the goods shall pass to the customer, as of the point in time the customer is in default of acceptance.
- 4.5 We will not take back any transport and other packaging material. This shall not include pallets and grid boxes. The customer shall be obliged to arrange for disposal of transport and packaging material at customer's own expense.

### 5. Acceptance

- 5.1 The customer shall be obliged to accept delivery/service upon receipt of the shipment notice or, as the case may be, upon notification of completion.
- 5.2 If the customer does not accept delivery/service by us, we shall be entitled, upon granting an appropriate time limit, to deny performance of the contract and to claim damages for non-performance.

### 6. Prices, Terms of Payment, Price Changes, Plea of Uncertainty, Subsequent Changes of Assignment

- 6.1 Unless the assignment confirmation provides otherwise, our prices shall apply ex works. Any packaging and shipment costs shall be invoiced separately.
- 6.2 Unless the assignment confirmation provides otherwise, we provide net prices. Value added tax shall be provided separately in the invoice in the statutory amount on the invoice date.
- 6.3 If delivery of the goods is agreed with the customer within a time limit of more than three months upon conclusion of the contract, we shall be entitled to pass on to the customer any price increases for material costs, particularly for steel, of up to 5% of the net price.

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- Such price adjustment of up to 5% shall entitle the customer to withdraw from the contract. We shall not be entitled to any such price increase, if the delivery time is extended to more than three months for reasons within our sphere of responsibility.
- 6.4 The granting of any discount shall require a written agreement.
- 6.5 Unless the order confirmation provides otherwise, the purchase price shall be payable by the customer without any discount within 14 days from receipt of the invoice. In case the customer is in default of payment, we shall be entitled to claim statutory default interest.
- 6.6 If we grant the customer payment in instalments, the remainder shall become immediately payable, if the customer is entirely or in part in default of payment of two consecutive instalments.
- 6.7 If upon conclusion of the contract with the customer it becomes evident that our payment claim is jeopardized due to the customer's lack of ability to perform, we may deny the performance incumbent on us. Such right to deny performance shall not apply, if the customer makes the payment or has provided security for such payment.
- 6.8 Any content-related and/or quantitative modifications and/or amendments of the assignment upon conclusion of the contract shall be paid for by the customer according to additional expense.
- 7. Exclusion of Set-Off, Limitation of Retention Rights**
- 7.1 The customer shall only be entitled to set-off any amounts, if the customer's counter-claims have been finally determined, are ready for decision-making, are undisputed or have been recognized by us.
- 7.2 The customer may only exercise their right of retention to the extent that their counter-claim is based on the same contractual relationship.
- 8. Transfer of Risk**
- 8.1 The risk of accidental loss and of accidental deterioration shall pass to the customer with the handing-over of the goods or, as the case may be, the customer's acceptance thereof. The hand-over shall be deemed to have taken place, if the purchaser is in default of acceptance.
- 8.2 In case the goods are shipped at the purchaser's request, the risk of accidental loss and of accidental deterioration of the goods shall pass to the purchaser at the time of shipment.
- 8.3 Upon request by the customer, we shall cover delivery for the benefit of the customer by transport insurance. The customer shall bear any related costs.
- 9. Assembly and Commissioning**
- 9.1 If the customer wishes us to execute the assembly, if appropriate, until commissioning of the equipment, a separate written agreement shall be required in each case.
- 9.2 Compensation shall be subject to our assembly terms and assembly rates, as in force each time. Any waiting time, for which the customer is responsible, shall also be considered as working time. Travel expenses shall be calculated according to actual expenses incurred.
- 9.3 The customer shall be obliged to counter-sign the daily time sheet of our assembly staff.
- 10. Retention of Title**
- 10.1 We shall retain title to all equipment and goods delivered and/or installed by us (hereinafter referred to as "Retained Goods"), until all our claims deriving from the business relationship with the customer, including any future claims deriving from contracts concluded later on, have been fully settled. This shall also apply to any balance demands for our benefit, if any individual or all claims are included in one current invoice (current account) and the balance is determined.
- 10.2 The customer shall adequately insure the Retained Goods, in particular against fire and theft. Any claims against the insurer for damage concerning the Retained Goods are already herewith assigned to us in the amount of the Retained Goods' value.
- 10.3 The customer may re-sell the goods delivered in the normal course of business. Any other disposals by the customer, including, without being limited to, pledges or the granting of security, shall be precluded. If the Retained Goods are not paid for immediately by the acquiring third party upon being re-sold, the customer shall only re-sell under retention of title. Entitlement to re-sell the Retained Goods shall expire immediately, if the customer suspends payment or is in default of payment towards us. This shall also apply, in case the customer is committed to any group of companies and/or in case any of the situations mentioned in the previous sentence occurs at the customer's parent or, as the case may be, controlling company.
- 10.4 The customer herewith already assigns to us all claims, including securities and ancillary rights, which derive from or in connection with the re-sale of Retained Goods vis-à-vis the end user or any third parties. The customer may not enter into any agreement with the customer's buyers, to the extent that such agreement excludes or affects our rights in any way or nullifies the advance assignment of the claim. In case the Retained Goods are sold with other objects, the claim against the third acquirer shall be considered as having been assigned in the amount of the delivery price agreed between us and the customer, provided that the amounts corresponding to individual goods cannot be determined based on the invoice.
- 10.5 The customer shall continue to be entitled to collect the claim assigned to us until revocation by us, which shall be admissible at any time. Upon request by us the customer shall provide to us all such information and documents as are necessary for the collection of the claims assigned, and, provided that we do not do this ourselves, shall immediately notify the customer's buyers of the assignment to us.
- 10.6 If the customer has already assigned to any third parties any claims under the re-sale of Retained Goods, particularly on the basis of recourse and non-recourse factoring, or has entered into any other agreements, due to which our current or future security rights according to section 10 might be affected, the customer shall notify us immediately thereof. In case of any recourse factoring, we shall be entitled to withdraw from the contract and to demand the return of any goods already delivered; this shall also apply in case of any non-recourse factoring, if the customer is according to the contract with the factor not entitled to freely dispose of the purchase price of the claim.
- 10.7 To identify the stock of goods delivered by us, we may at any time during normal business hours access the customer's premises. Taking back of Retained Goods shall only be deemed as withdrawing from the contract, if we explicitly declare this in writing, or it is provided for by mandatory statutory provisions. The customer shall immediately notify us of any third-party access to any Retained Goods or claims assigned to us.
- 10.8 If the value of the securities granted to us under the above provisions exceeds the secured claims by more than 10% in total, we shall upon the customer's request correspondingly release any securities at our option.
- 10.9 Any processing, mixing and/or combination of Retained Goods shall be for our benefit as manufacturers, within the meaning of section 950 BGB, but without creating any obligation for us. If the Retained Goods are processed, mixed or inseparably combined

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with any other objects not belonging to us, we shall acquire co-ownership of the new object *pro rata* of the invoice value of our goods in proportion to the invoice value of the remaining processed or combined objects. If our goods are mixed or combined with other movable objects resulting in one single object to be considered as the main object, the customer now already transfers to us co-ownership thereof in the same proportion. The customer shall hold ownership or co-ownership for us free of charge. Any co-ownership rights subsequently deriving shall be considered as Retained Goods. Upon request by us the customer shall be obliged at any time to provide to us all information that is necessary for the prosecution of our ownership or co-ownership rights.

#### **11. Notification of Defects, Warranty, Limitation Period**

- 11.1 The customer shall examine the goods received by us immediately upon receipt and shall, if any defect is identified, notify us thereof immediately in writing. If the customer fails to provide such notification, the goods shall be deemed to have been approved, unless the defect could not have been identified during the examination.
- 11.2 If such defect appears later, the customer shall notify us thereof immediately upon identifying such defect, otherwise the goods shall even in view of such defect be deemed as having been approved.
- 11.3 For the preservation of the rights under sections 11.1 and 11.2 timely dispatch of notification shall suffice.
- 11.4 The provisions under sections 11.1 and 11.2 shall not apply, if we have fraudulently concealed any defect.
- 11.5 In case of any defect, we shall at our own option be entitled to either proceed to supplementary performance in the form of remedying the defect or to proceed to replacement delivery (delivery of a defect-free object). In case of remedying the defect, we shall bear all expenses necessary for remedying the defect, including, without being limited to, transport, road, labour and material costs, to the extent that such are not increased because the goods have been transported to any place other than the place of performance.
- 11.6 In case of remedying the defect, we shall have a claim of restitution regarding valuable components, which have been replaced during rectification. In case of replacement delivery, we shall be entitled to demand from the customer the defective work already delivered.
- 11.7 The customer may at their option declare withdrawal or demand that the purchase price be reduced correspondingly (reduction), in any of the following cases:
- supplementary performance by us failed,
  - supplementary performance by us cannot reasonably be accepted by the customer,
  - the type of supplementary performance was denied by us on the grounds of disproportionately high costs within the meaning of section 439 para. 3 BGB,
  - we have seriously and finally denied another service,
  - we have not effected a service by a due date provided in the contract or within a time limit set forth in the contract (where time is of the essence), even though service by the due date or within the time limit is essential according to the customer's notification to us prior to the conclusion of the contract or by reason of any other circumstances accompanying the conclusion of the contract, or
  - as for any obligation that was not met by us according to the contract, there exist special circumstances, which considering the interests of both parties justify immediate withdrawal by the customer.
- 11.8 The customer shall be entitled, without being obliged to determine a separate time limit, to demand compensation from us, if we have seriously and finally denied service or there exist special circumstances, which considering both parties' interests justify immediate assertion of the claim for compensation.
- 11.9 Unless otherwise provided for in this section regarding evident defects, any warranty claims of the customer shall be time-barred within twelve months from the transfer of risk.

#### **12. Limitation of Liability**

- 12.1 In case of any breach of duty by us, our liability shall be limited to intent and gross negligence. These limitations of liability shall also apply in case of breaches of duty by our legal representatives and/or vicarious agents.
- 12.2 The limitations and exclusions of liability in para. 1 of this section shall not apply:
- for damages arising from injury to life, body or health (personal injuries), for which we or our vicarious agents are to be held responsible,
  - in case of any delay by us, to the extent any fixed delivery date was agreed,
  - in case any guarantee as regards quality or successful performance was provided or in case any procurement risk was assumed,
  - for claims under the German Product Liability Act,
  - for breaches of cardinal duties (essential contractual obligations). This shall include damages caused by us due to any simple negligent violation of such contractual obligations, fulfilment of which constitutes a *conditio sine qua non* and on the fulfilment of which the customer regularly relies and may rely.
- 12.3 Except in any of the cases under para. 2 of this section, our liability and the liability of our vicarious agents for slightly negligent breaches of duty shall be limited to the amount of the foreseeable damages typical of this type of contract. Thus, we shall not be liable for damages, which we are not obliged to have foreseen as a possible consequence of a breach of contract, when the contract was concluded. Neither shall we be liable for damages not occurring in the delivery item itself; we shall particularly not be liable for any lost profits.
- 12.4 Unless our liability is limited anyway under section 12.3 (foreseeable damages typical of this type of contract) and no exception under section 12.2 applies, our liability shall for each and every breach of duty be limited to € 20,000.00.

#### **13. Jurisdiction/Governing Law**

- 13.1 This contract shall be subject to the law of the Federal Republic of Germany.
- 13.2 If the customer is a merchant, a legal person under public law or a special fund under public law or has no general place of jurisdiction in Germany, our place of business shall be the place of performance and jurisdiction.

#### **14. Written Form Requirement**

Any agreement shall be in writing. This shall also apply for the cancellation of the written form requirement.

#### **15. Severability**

If any individual provisions of these Terms are or become invalid, null or voidable, the remaining provisions shall not be affected thereby.

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