

# GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY

## 1. General

- 1.1. These provisions shall form a part of all of our offers and contracts on the delivery of goods and provision of services, including current and future business relations
- 1.2. Verbal agreements or agreements by telephone shall only be valid in the event they have been confirmed by us in writing. All contracts shall only become effective upon our written confirmation, unless such contracts were concluded in writing on our behalf by properly authorized persons.
- 1.3. Any terms and conditions of business of the customer or of any third parties that we have not expressly acknowledged in writing shall not be binding on us. This shall also apply in the event that we do not expressly object such terms and conditions of business in individual cases.
- 1.4. Silence on our part with regard to general terms and conditions of business referred to by customers or third parties, the conveyance of such general terms and conditions of business or letters of customers and third parties containing their general terms and conditions of business shall not imply any acknowledgement of such conditions.
- 1.5. All trade terms agreed upon shall be applicable in accordance with the INCOTERMS as most recently amended.
- 1.6. Any divergent agreements shall require our express written consent.

## 2. Offer and Order Acceptance

- 2.1. All offers shall be subject to change. With regard to the determination of quantity, the weight / volume determined by the dispatch warehouse by weighing / measuring shall be authoritative, unless the weight / volume was determined upon delivery at the unloading point by means of calibrated measuring equipment.
- 2.2. The contract shall come about by written confirmation of the customer's order or by delivery of the goods.
- 2.3. Any modifications of or supplements to our agreements must be made in writing. This shall also apply to a revocation of the written form requirement itself.

## 3. Delivery

- 3.1. If and as far as no delivery periods have been agreed upon, we shall deliver the ordered goods on the next possible date. Our delivery obligation is subject to our company being supplied in a correct and timely manner. All cases of force majeure as well as any official measures, strikes or other events beyond our control shall release us from the obligation to deliver.
- 3.2. Transactions for delivery by a fixed date shall require our previous written confirmation of the delivery date as a fixed date.
- 3.3. Delivery and shipping shall be at the cost and the risk of the customer, including prepaid delivery and transport by employees of the customer or third parties commissioned by us (§ 447 (1) of the German Civil Code [BGB]). This shall also apply to any possible return shipments. In the event delivery is delayed at the request of the customer or the customer's employees or for other reasons that the customer is responsible for, the risk of accidental loss of the goods shall pass to the customer upon notice of readiness for shipment.

- 3.4. We shall be entitled to make partial deliveries, unless partial fulfilment of the contract is of no interest to the customer.
- 3.5. Unless otherwise agreed in writing, we shall determine the shipping route and the mode of transport. Section 423 of the German Commercial Code [HGB] shall apply to the delivery period. The shipment shall only be insured at the express request and expense of the customer.
- 3.6. In the event goods are not specified or called up within the periods agreed upon, we may, after having unsuccessfully demanded payment and set a reasonable time limit, withdraw from the contract and claim compensation, i.e. at our choice either compensation for the loss incurred or – without evidence of any damage – 10 percent of the agreed-upon price. It shall be incumbent on the customer to prove that we have not incurred any damage or only a much less significant damage.

## 4. Packing

- 4.1. The choice of appropriate packing (standard packing) shall be left to our discretion.
- 4.2. If the customer desires special packing deviating from the standard packing, we shall charge a special fee. The customer is hereby obligated to release us from any liability to take back or recycle any special packing.
- 4.3. Any loan packing provided by us is to be returned to us by the customer at its expense within a period of 120 days from the invoice date. The customer shall bear the risk of the returning transport. We reserve the right to charge a deposit on such packing material.

## 5. Defects

- 5.1. The customer is to give a written notice of any defects immediately after discovering such defects.
- 5.2. The customer must first give us the opportunity to render subsequent performance within a reasonable period of time, at our choice by remedying the defect, delivering a flawless item or producing a new one.
- 5.3. In the event subsequent performance would finally fail, would not be reasonable for us or the customer, or would only be possible at excessive cost the customer may – without prejudice to any claims for compensation – withdraw from the contract or reduce the compensation.
- 5.4. Any claims of the customer against us for reimbursement of any expenses necessary for subsequent performance, particularly costs of transport, work and materials, are hereby excluded should the expenses increase because the object of the delivery was subsequently transported to a place other than the place of the customer's business, unless such transport is in line with the intended use of the object of the delivery.
- 5.5. The customer's legal rights of recourse against us shall exist only as far as the customer has not concluded any agreements with its clients that go beyond the legal warranty claims. Furthermore, item 5.4. above shall apply accordingly to the extent of the customer's right to recourse against us.



- 5.6. In the event the customer submits a notice of defect, the customer may retain payments to an extent appropriate to the degree of the defect.
- 5.7. The period of limitation for defects in quality or title is one year and shall begin upon the passing of risk. Such period of limitation shall not apply if and as far as -pursuant to §§ 438 (1) No. 2, 479 (1), 634a (1) No. 2 and 651 of the German Civil Code [BGB] – longer periods are applicable; the defect was fraudulently concealed or in one of the cases of liability specified in item 6. below.
- 5.8. Our obligation to pay compensation for damage shall be based on item 6. below.
- 5.9. Subject to the provisions of item 6. below, we shall deliver used items to the exclusion of liability for defects in quality or title.
- 5.10. No reversal of the burden of proof to the detriment of the customer shall be linked to the provisions set forth above.

## 6. Liability

- 6.1. Any claims for damage compensation or reimbursement of expenses (hereinafter referred to as “Claims for Damages”) on the part of the customer, on whatever legal grounds, are hereby excluded, unless such Claims for Damages are based on the provisions of the Product Liability Act, an intentional or grossly negligent breach of contractual or legal obligations on our part, damage to health or bodily harm of the customer resulting from a breach of duty that we are responsible for, the assumption of a warranty for the existence of a characteristic, or the violation of essential contractual duties on our part.
- 6.2. In the event essential contractual duties are violated, the Claims for Damages of the customer against us shall be limited to the foreseeable damage that is typical of the contract, unless the damage was caused intentionally or by gross negligence, we are liable for damage to health or bodily harm, or based on the assumption of a warranty for the existence of a characteristic on our part.
- 6.3. Any breach of duty on our part shall be equivalent to a breach of duty by our legal representatives or vicarious agents.
- 6.4. Item 5.10. above shall apply accordingly.

## 7. Right of Set-Off and Retention

- 7.1. The customer can only set any of our claims off against undisputed, legally established claims or claims that are ready for decision (proven claims) or assert a right of retention or to refuse performance on the basis of such claims.
- 7.2. The above exclusion of the right of retention / right to refuse performance shall not apply in case we have already received the part of the compensation for our non-contractual performances that corresponds to the value of our contractual performance or in case we ourselves retain a part of the compensation corresponding to the value of the defective goods in the relation with our suppliers.
- 7.3. The customer is hereby obligated to notify us in writing of any setting off of claims or assertion of a right of retention / right to refuse performance.

## 8. Payments and Lump-Sum Damage Payments

- 8.1. The net amount invoiced, with no deductions, shall be due upon receipt of the invoice, however, not later than upon delivery of the goods. Any deferment of the amount invoiced shall require our written confirmation.
- 8.2. In the event a debit entry, a cheque or a bill of exchange for the account of the customer is not honoured by the customer's credit institute or the drawee, or in the event the customer gets into arrears with a payment, we shall be entitled to charge the legal default interest and damage caused by the delay.
- 8.3. In the event the customer fails to pay on the due date, we shall be entitled to refuse performance of all current transactions and to refuse to conclude any new transactions.
- 8.4. Instalment payments shall be set off exclusively in accordance with the legal provisions, even if that is in conflict with the customer's provisions.
- 8.5. In the event it becomes known to us after the conclusion of a contract that the customer's (objective) creditworthiness cannot be granted, we shall be entitled to make deliveries based on such contract or from other transactions only against prepayment. If the customer does not make the prepayment, we shall be entitled – after the setting of a reasonable deadline – to withdraw from the contract or to claim damage compensation in lieu of performance. This provision does not only apply to circumstances that occurred only after the conclusion of the contract, but also to such circumstances that existed prior to the conclusion of the contract, unless such circumstances were known or discernible to us upon conclusion of the contract.

## 9. Retention of Title

- 9.1. We shall retain title to the delivery until the customer has met all of its obligations under the business relation with us. This shall also apply in the event payment is made for specific deliveries of goods designated by the customer. In the case of invoices on account, the retained title shall also be considered to be a security for any claims for damages we are entitled to. If cheques or bills of exchange are delivered in payment, only the irrevocable payment of the cheque or of the bill of exchange without reservation shall be regarded as fulfilment.
- 9.2. In case the reserved goods are resold, the customer hereby assigns any resulting claims to us. The assigned claims shall serve to secure all of the payment claims against the customer to which we are entitled until all claims under the business relation with the customer have been satisfied.
- 9.3. The customer must notify us immediately in writing of any attachments or other interventions by third parties in the title retained. Any intervention cost shall be borne by the customer.
- 9.4. The retention of the title shall not release the customer from its liability for accidental loss and accidental deterioration of the goods after the goods are in the customer's possession or the risk has passed to the customer in accordance with item 3.3. above.
- 9.5. All rights and claims of the customer against insurance companies based on the insurance of the reserved goods shall be assigned / transferred to us by way of security upon conclusion of the contract until all claims under the business relations with the customer have been satisfied.



- 9.6. The assignments and legal transfers pursuant to items 9.2. and 9.4. above shall not involve any deferment of our payment claims against the customer.
- 9.7. The customer must adequately insure the reserved goods against fire, water damage, burglary, etc.; evidence of such insurance is to be provided to us upon request. In case any of the aforementioned insurance policies is not taken out, we shall be entitled to take out a corresponding insurance policy on behalf and at the expense of the customer.
- 9.8. Any processing or transformation of the goods by the customer shall be undertaken on our behalf. In the event the goods are processed together with other objects not owned by us, we shall acquire co-title to the new item in the ratio of the value of the goods to the other objects processed at the time of the processing.
- 9.9. In the event the goods are mixed with other objects not owned by us, we shall acquire co-title to the new item in the ratio of the value of the goods to the other objects mixed at the time of mixing. If the customer's item is to be regarded as the main item, the customer is to assign co-title to us on a pro-rata basis.
- 9.10. In the above-mentioned cases of processing, transformation or mixing of the goods, the customer shall be entitled to an expectant right to acquire title to the processed, transformed or mixed item to the degree that existed prior to the processing, transformation or mixing of the item.
- 9.11. We are obliged to release the security to which we are entitled upon request of the customer to the extent the value of the security exceeds the claims to be secured by more than 20 %.

## 10. Price Adjustment

- 10.1. In the event our costs increase unforeseeably after the conclusion of the contract due to increases in standard wages, raw material prices, freight and carriage, exchange rates, taxes, customs duties or other public charges, the agreed-upon purchase price shall increase in proportion to the additional costs accruing to us therefrom.
- 10.2. This shall not apply to goods to be delivered within four months from the conclusion of the contract, unless the delivery is made within the framework of a long-term contractual relation.

## 11. Data Protection

- 11.1. We hereby point out that we electronically store the purchasers' data necessary for the course of business, such as name, address, order, etc., in a data processing system. The data shall be protected from misuse in accordance with the provisions of the Federal Data Protection Act.
- 11.2. We hereby reserve the right to pass on the necessary data for credit insurance to the credit insurer.
- 11.3. The customer hereby agrees to the storage of the data and to the transfer of the data to the credit insurer.

## 12. Place of Fulfilment and Place of Jurisdiction

- 12.1. Achim shall be the place of fulfilment for all deliveries, performances and payments.

- 12.2. The local / regional court with jurisdiction over our registered office shall be the exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relation between us and our customers, including any disputes regarding documents, bills of exchange or cheques. However, we hereby reserve the right – at our choice – to bring an action against the customer before the court with jurisdiction over the customer's registered office as well.
- 12.3. The laws of the Federal Republic of Germany shall be applicable, excluding the Convention of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

## 13. Final Provisions

In case one or more provisions of these Terms and Conditions of Sale and Delivery should be or become invalid, this shall not affect the validity of the remaining provisions. The invalid provision shall be replaced by a provision that regulates the economic intent of the invalid provision to the full extent or as far as possible in a legally effective manner.