



### **§1 General; Scope of Applicability**

(1) These Terms and Conditions of Business apply exclusively and replace all previous Terms and Conditions of Business. They apply until new Terms and Conditions of Business come into force, including for all future business.

Differing or contrary terms and conditions are not recognised by us, unless we have expressly agreed to them in writing.

(2) The good(s) or service(s) to be supplied under these Terms and Conditions of Business will be described as the "delivery item" in the following.

(3) These Terms and Conditions of Business also apply to future business between the parties and also when we deliver the goods in awareness of differing or contrary terms and conditions.

(4) These General Terms and Conditions of Business apply only to merchants, legal persons under public law and public law funds within the meaning of Section 310, Paragraph 1, of the German Civil Code (BGB).

### **§ 2 Offer, Acceptance**

(1) The delivery items offered by us do not represent a binding offer in the meaning of Section 145 of the German Civil Code; rather it is an invitation to the customer to make an offer for the delivery items.

(2) If the order represents an offer in the meaning of Section 145 of the German Civil Code, we are entitled to accept it within a period of two weeks.

(3) The offer is only deemed to be accepted when it is confirmed by us. The offer will only be accepted to the extent confirmed in the order confirmation.

### **§ 3 Drawings and Descriptions**

(1) If a party makes available to the other party drawings and technical documents on the delivery item or its manufacture prior to or after the conclusion of a contract, these remain the property of the submitting party.

(2) If a party receives drawings, technical documents or other technical information, he, she or it may not use these for any purpose other than that for which they were supplied without the agreement of the other party. They may not be used for another purpose, copied, reproduced, or transmitted or communicated to a third party without the agreement of the submitting party.

### **§ 4 Prices, Payment**

(1) If nothing different has been agreed, our prices are to be understood as net price free carrier (FCA - Incoterms 2010) plus the relevantly applicable Value Added Tax and excluding the costs of packaging. Possible costs for assembly shall be invoiced separately at the relevantly applicable price when the work is carried out. If more than four months have passed between order confirmation and delivery, we are entitled, contrary to the order confirmation, to invoice the price which applies on the day of delivery.

(2) If nothing else has been agreed, payments become due immediately upon issue of the invoice. Other agreements require our express written agreement. At the latest after the expiry of 30 days from receipt of the invoice, default interest of 8% above the relevant annual base interest will be charged. We reserve the right to claim any further damages from default.

(3) Regardless of the means of payment used, the payment will only be regarded as having made when the full invoice amount is credited to the account of the supplier.

## **§ 5 Set-off, Retention**

(1) The customer is only entitled to set-off if his, her or its counter claims are undisputed or have been legally determined. The customer is entitled to assert rights of retention only on the basis of counter claims under the same contractual relationship.

## **§ 6 Delivery**

(1) The agreed delivery clauses are to be interpreted in accordance with the INCOTERMS applicable at the conclusion of the contract.

In the absence of a separate delivery clause in the contract the delivery item shall be regarded as delivered "free carrier" (FCA).

(2) The supplier is allowed to make part deliveries – insofar as no other agreement has been made in writing.

(3) The supplier may undertake design or form changes as well as changes to the scope of delivery during the delivery period, insofar as the object of purchase is not changed considerably and the changes are reasonable for the purchaser.

(4) Deliveries presuppose the timely and proper fulfilment of the customer's obligations. The right to object to the non-fulfilment of the contract remains reserved.

(5) In respect of a default of acceptance or other culpable breach of duties of cooperation on the part of the customer, we are entitled to compensation for the losses arising therefrom, including any additional expenditure. The right to further-reaching claims shall remain reserved. The risk of accidental loss or accidental deterioration of the delivery item shall, in this case, be transferred to the customer at the time of the default of acceptance or the other breach of the duty of cooperation.

## **§ 7 Transfer of Risk, Despatch**

(1) In the case of an FCA delivery at the request of the customer, the supplier undertakes to send the delivery item to his, her or its place of destination, the risk transfers at the latest at the time that the first haulier takes delivery of the delivery item. In the absence of a deviating agreement, part deliveries are permitted.

(2) All the costs of despatching the goods are to be borne by the customer. In addition to the transport costs incurred this also includes taxes and customs duties caused by the despatch.

## **§ 8 Delivery Period, Delays**

(1) Except in the event of a delay brought about through force majeure or an act or omission of the customer, the customer is entitled to demand fixed compensation for loss and damage from the day on which the delivery was meant to be made. The delivery shall be deemed to have been made on time if the goods have left the works or the stores of the supplier or the readiness to dispatch the goods have been reported to the customer.

The fixed compensation is determined at 0.5 % of the purchase price for each full week of the delay. The fixed compensation should not exceed 7.5 % of the purchase price.

(2) If only a part of the delivery is delayed, the fixed compensation shall be calculated on that part of the purchase price which is attributable to such part of the delivery item as cannot, in consequence of the delay, be used as intended.

(3) Claims exceeding the fixed compensation cannot be asserted by the customer against the supplier in the event of a delay. All other claims against the supplier with regard to a delay are excluded, unless there is gross negligence on the part of the supplier.

(4) If the customer does not collect at his, her or its own cost goods to be collected at a bindingly agreed delivery date, the customer will be in default of acceptance. The same applies in respect of an agreement on an approximate guide time, if the customer does not collect the goods at the collection time announced. We are entitled to announce beforehand to the customer the opportunity to collect goods to be collected with a deadline of two weeks. The collection of goods to be collected is a principal contractual obligation of the customer.

## **§ 9 Retention of Title**

(1) The delivery item remains the property of the supplier until payment is made in full, insofar as such retention of title is valid according to the applicable laws.

(2) At the request of the supplier, the customer is to support it comprehensively in its efforts to protect the supplier's right to ownership of the delivery item in the country concerned.

## **§ 10 Terms and Conditions of Assembly, Maintenance and Repair**

(1) The parties agree that if the supplier is also to carry out assembly, maintenance and repair work in accordance with the order confirmation, the following paragraphs shall also apply.

(2) The customer is obligated to complete all preparatory work (in particular earthworks, foundation works, building and scaffolding works, including necessary inlets and outlets) on time and completely in accordance with the order confirmation, so that we can commence the work at the agreed date. If we are not able to commence the work at the agreed date due to reasons for which the customer is responsible, the customer must compensate us for costs incurred (travelling costs, etc.).

(3) The customer must bear the costs of transportation of the goods to be assembled.

(4) Our services shall be charged in accordance with the time and work effort on the basis of the relevantly, applicable hourly rates. The costs for travel to and from the site and board and lodging costs shall be invoiced separately.

(5) The customer must accept the assembly, maintenance and repair work without delay. Acceptance shall be deemed to have occurred when the equipment is taken into normal workshop operation or the customer does not accept assembly or repair work ready for acceptance within a period of two weeks after a request from us.

(6) Parts exchanged on equipment repaired by us are transferred into our ownership, unless something different has been agreed.

(7) The customer must notify us of obvious defects in the assembly or repair work within a preclusive period of two weeks after the cessation of the work. The customer must notify us of other defects within a period of two weeks after their discovery. The statutory limitation periods remain unaffected.

(8) Warranty claims are initially restricted to subsequent fulfilment (rectification or replacement delivery). Should the subsequent fulfilment finally fail, the customer is entitled to reduce the purchase price or to withdraw from the contract.

## **§ 11 Warranty**

(1) A prerequisite for any warranty rights of the customer is his, her or its orderly performance of inspections and deficiency obligations pursuant to Section 377 of the German Commercial Code (HGB).

(2) Warranty claims shall lapse within 12 months of the transfer of risk; warranty claims in respect of second-hand delivery items are excluded.

(3) The warranty period shall commence with the delivery of the goods to the purchaser.

(4) In respect of defects in the delivery item, initially the customer only has the right of subsequent performance in the form of rectification of the defect. Concerning this, the supplier shall bear the costs for repairs or exchange of replacement parts as well as return despatch; any further costs, whether at the marketing partner of the customer or his, her or its customers are not taken over. Should the subsequent fulfilment finally fail, the customer is entitled to reduce the purchase price or to withdraw from the contract.

(5) The supplier does not assume liability for defects based on materials provided by the customer or a design stipulated by the customer. The supplier shall be liable only for such defects that occur under the contractually foreseen operational conditions or in proper use of the delivery item.

(6) The supplier does not assume liability for such defects based on: poor maintenance, incorrect installation, heavy impact or other improper treatment, use of unsuitable operating materials or faulty repair by the customer or changes without the written agreement of the supplier. The supplier's liability does not extend further than to normal wear and tear.

## **§ 12 Liability**

(1) Save as otherwise stated in these General Terms and Conditions of Business, the liability of one party to the other party is excluded for a standstill in production, lost profit, loss of use, contractual losses or any other consequential losses or indirect losses.

(2) This exclusion of liability does not apply in respect of intent or gross negligence or culpable injury to life, limb and health. It also does not apply to culpable breaches of major contractual obligations. However, in the event of a slightly negligent breach, the supplier shall be liable only for the damage which is typical of the contract and reasonably foreseeable.

(3) Contractual obligations are important if they make the execution of the contract possible in the first place so that the contracting partner regularly relies and may rely on their adherence ("cardinal obligations").

(4) Furthermore, the liability restrictions do not apply in cases in which, according to the product liability law, in case of defects in the delivery item, liability exists for personal injury or material damage to privately used objects. They also do not apply to defects that the Supplier has maliciously concealed or in cases where it has guaranteed the absence of such defects.

## **§ 13 Changes to or Cancellation of Orders:**

(1) If the customer cancels an order accepted by us up to 3 weeks before the foreseen delivery date or amends it or wants a suspension of the confirmed delivery date, we are entitled to demand lump sum expenditure reimbursement of 10 % of the value of the relevant order. The customer retains the right to provide proof of lesser expenditure on costs. A cancellation or a change to the order in less than 3 weeks before the foreseen delivery date is excluded.

(2) A change or a cancellation of an order after loading/collection as well as with regard to customer-specific special productions or container orders is excluded.

## **§ 14 Force Majeure**

(1) Either party shall be entitled to suspend performance of his, her or its contractual obligations to the extent that such performance is made impossible or unreasonably onerous by any of the following circumstances: industrial disputes and any other circumstance beyond the control of the parties such as fire, war, extensive military mobilization, rebellion, requisitioning, confiscation, embargos, restrictions on energy consumption and lacking or delayed deliveries by subcontractors based on the circumstances listed in this section. Circumstances pursuant to this section which occur before or after the conclusion of the contract shall entitle a party to suspend performance of the contractual obligations, only if its effect on the performance of the contract could not have been foreseen at the time of the formation of the contract.

(2) The party citing force majeure is to inform the other party without delay and in writing of the occurrence and end of such circumstance. If force majeure prevents the customer from fulfilling his, her or its obligations, he, she or it shall compensate the supplier for expenses incurred in securing and protecting the delivery item.

(3) Regardless of anything which may otherwise follow from these General Terms and Conditions of Business, either party shall be entitled to terminate the contract by notice in writing to the other party if performance of the contract is suspended for longer than six months.

## **§ 15 Applicable Law, Place of Jurisdiction**

(1) This contract is subject to the laws of the German Federal Republic (the UN Convention on the International Sale of Goods shall be excluded).

(2) The place of fulfilment and the exclusive place of jurisdiction for all disputes resulting arising from or in connection with this contract is Hamburg.

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