

# General Sales and Delivery Terms

## § 1 General Terms/Scope of Application

- (1) The present General Sales and Delivery Terms (GST) will apply to all our business relations with our customers where they are businessmen as defined by § 14 BGB (Civil Code).
- (2) Our GST will apply exclusively. Any deviating, contrary or supplementary General Business Terms by the customer will only become part of the contract if we expressly agreed to their validity. This requirement of consent will apply in every case, e.g. even where we carry out the delivery to the customer without reservations with knowledge of the customer's GST.
- (3) Individual agreements concluded in the specific case with the customer (including ancillary agreements, addenda and amendments) will take precedence over the present GST. A written contract or our written confirmation will be authoritative for the subject matter of such agreements.

## § 2 Conclusion of the Contract, Copyrights

- (1) Our offers, prospectuses, price lists and other documents are subject to change and non-binding. All data such as structural values, measurements, weight, illustrations, descriptions, calculations, assembly sketches and drawings in sample books, price lists and other printed materials are only approximate and to this extent are also not binding. Manufacturing drawings will not be submitted. We expressly reserve the ownership rights and copyrights to all our documents and information.
- (2) The order of the delivery item by the customer will be regarded as a binding contractual offer. Acceptance may be declared either in writing (e.g. order confirmation) or through supply to the customer. We reserve the right to make changes to the delivery item, in particular with regard to design and material, provided that the item and its function is not fundamentally altered.
- (3) Upon placement of the order the customer confirms his solvency. However, if after placement of the order doubts arise in this context we will have the right to make performance of the contract dependent on payment of security (e.g. a bank guarantee).

## § 3 Delivery, Passing of Risk

- (1) Delivery deadlines will only be binding for us if confirmed by us in writing. Where we are unable to keep binding delivery deadlines for reasons beyond our control (non-availability of the service) we will inform the customer of this immediately, informing him of the anticipated new delivery date. Where the service is still not available within the new delivery period we will have the right to wholly or partially rescind the contract; we will immediately reimburse any payment already made by the customer. A case of non-availability of the service as defined here is in particular where our own suppliers fail to deliver on time, where we have concluded a hedging transaction, where neither we nor our suppliers are at fault, or where in the individual case procurement is not one of our obligations.
- (2) Delivery will be ex our plant, which will also be the place of performance. Upon request and at the expense of the customer the delivery item will be sent to another destination. Unless otherwise agreed we will have the exclusive right to determine the type of shipping (in particular the transport company, shipping route, packaging.)
- (3) The risk of accidental loss and accidental deterioration of the delivery item will pass to the customer at the latest upon handover to the customer. However, in the case of shipping of the delivery item the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay will already pass upon delivery of the goods to the shipping agent, carrier or other person or institution hired for shipping the goods.
- (4) Excess standard goods will be credited at 80% of the net price if returned in flawless condition within a period of 14 days from the date of delivery to the date of return.
- (5) We have the right to make partial deliveries and to charge these.

## § 4 Prices/Terms of Payment

- (1) Unless otherwise agreed, all prices are defined as ex works excluding transport, packaging, value added tax and any customs duties, which will be due additionally.
- (2) The prices quoted are net cash and will be due within 30 days after the invoice date. In the case of new customers or first-time orders and in the case of doubt concerning creditworthiness (payment in arrears from other orders, etc.) we reserve the right to only make a delivery on the basis of advance payment. Independent of this, our payment terms for an assignment volume in excess of 5,000.00 Euro are as follows:  
30% upon placement of the order, 40% upon start of production and 30% after delivery/inspection. Rebates and discounts will only be granted if expressly agreed on in the respective order. Services and ancillary purchase costs are not subject to rebates and discounts.
- (3) The customer will only be entitled to any rights of set-off or retention if his counterclaims are res judicata, uncontested or recognized by us.
- (4) Where the customer is in arrears with payment or circumstances become known to us which objectively cast doubt on the customer's creditworthiness we will have the right to charge the total remaining claim. In this case we will have the right to demand adequate advance payments or a deposit.
- (5) Where the customer employs services for on-site assembly which exceed the original assignment they are to be remunerated at the customary hourly rates.

## § 5 Customization, Tools, Assembly, Films and Printed Documents

- (1) In the case of a customized product rescission of the respective order and an exchange of the respective product is not possible. Unless otherwise explicitly agreed on, the measurements specified by the customer will be exclusively binding for us. Accordingly, the customer is solely responsible for correct measurements. Where more than 5% of the original assignment volume is incurred in the case of customized products the customer will be obligated to accept any excess volumes at the agreed prices and in the case of volumes that fall short by 5% or more we will not be obligated to carry out a make-up delivery.
- (2) Tools, films and printed documents will remain our property even if they were produced especially for the customer and even where it was agreed that the customer would assume proportional tool costs.
- (3) Proportional tool costs will not be reimbursed unless amortization of these costs was expressly agreed on with us in the individual case.
- (4) We have the right to hire professional assembly companies (contractors) for assembly jobs.

## § 6 Inspection and Final Acceptance

- (1) If an inspection and final acceptance is agreed on, it must take place immediately after notification of willingness to carry out an inspection and final acceptance. Where the customer is in arrears with the inspection and final acceptance the delivery item will be regarded as having been inspected and accepted by the latest after the third work day after the scheduled inspection/acceptance, but by the latest upon use.
- (2) The customer must create the necessary conditions for performance of an inspection/final acceptance. With the exception of our personnel costs the customer will bear all costs associated with the inspection.

## § 7 Guarantee

- (1) The statutory provisions will apply to the rights of the customer in the case of material and legal defects (including erroneous delivery, volume shortfall and improper assembly or defective assembly instructions) unless otherwise agreed. The statutory special provisions will remain unaffected upon final delivery of the goods to a customer (customer recourse claim pursuant to §§ 478, 479 BGB) (Civil Code).
- (2) The basis of our liability for defects is chiefly the agreements concluded regarding the features of the delivery item. Where the features were not agreed on the existence of a defect will be evaluated according to the statutory regulations (§ 434 Sect. 1 S 2 and 3 BGB).

- (3) The prerequisite for the customer's defect claims is compliance by the customer with his statutory inspection and reporting duties (§§ 377, 381 HGB). Where a defect is detected during inspection or later we are to be notified of this immediately in writing. The notification will be regarded as immediate if made within two weeks; the timely sending of the notification will be sufficient for determining if the deadline has been complied with. Independent of this inspection and reporting duty the customer must report visible defects in writing (including erroneous deliveries and shortfalls) within two weeks after delivery; in this case as well, the timely sending of the notification will be sufficient. Where the customer fails to perform the proper inspection and/or report, our liability for the defect which was not reported will be excluded.
- (4) Where the delivery item is defective we can opt either for make-up performance by rectification of the defect (rectification) or replacement with a good that is free of defects (replacement delivery). Our right to refuse make-up performance under statutory provisions will remain unaffected.
- (5) We have the right to make the make-up performance by us dependent on payment by the customer of the price due. However, the customer will have the right to retain an adequate portion of the price in relation to the defect.
- (7) The customer must allow us the necessary time and opportunity for the make-up performance, in particular he must handover the queried goods to us for inspection. In the case of a replacement delivery the customer must return the defective item according to the statutory provisions. Make-up performance does not include the expansion of the defective item or re-installation where we were originally obligated to install the item.
- (8) The expenditure necessary for inspection and make-up performance, in particular transport, haulage, work and material costs (not: expansion and installment costs) will be assumed by us if there is an actual defect. However, where a request for rectification of a defect by the customer proves to be unjustified we have the right to demand the costs hereby incurred from the customer.
- (9) In emergencies, i.e. in the case of danger to operational safety or for prevention of disproportionate damage the customer has the right to rectify the defect himself and to demand reimbursement of the objectively necessary expenditure from us. We are to be informed immediately in the case of this independent rectification where possible. The right to independent rectification will not apply if we would have the right to refuse such make-up performance according to the statutory provisions.
- (10) Where make-up performance has failed or a deadline to be stipulated for make-up performance by the customer has lapsed fruitlessly or can be waived according to the statutory provisions the customer may rescind the contract or have the purchase price reduced. However, there will be no right of rescission in the case of a minor defect.

## § 8 Liability

- (1) To the extent that it is not otherwise agreed on in the present GST including the following terms we will be liable according to the relevant statutory provisions in the case of a breach of contractual or extracontractual duties.
- (2) We will be liable for damage compensation in the case of willfulness and gross negligence, regardless of the legal ground. In the case of minor negligence we will only be liable for
  - a) damage to life, limb or health,
  - b) damage arising from the breach of a cardinal contractual duty (duty whose fulfillment is essential to the proper performance of the contract and on whose compliance the contractual partner can normally rely); in this case, however, our liability is limited to compensation of the foreseeable, typical damage.
- (3) The restrictions of liability set out in Sect. 2 will not apply where we willfully concealed a defect or assumed a guarantee for the features of the good. The same will apply to the customer's claims according to the Product Liability Act.
- (4) The customer may only rescind or terminate the contract due to breach of a duty not related to a defect if we are liable for the breach of duty. A free right of termination by the customer (in particular pursuant to §§ 651, 649 BGB) is excluded. In other respects, the statutory prerequisites and legal consequences will apply.
- (5) In the case of performance or contractual services according to the customer's instructions liability for third party intellectual property rights is excluded. We are not obligated to check the existence of third party intellectual property rights.

## § 9 Retention of Title

- (1) We will retain the title to the delivered goods for the purpose of securing all claims we are entitled to from the present or future business relationship until payment of all outstanding amounts by the customer.
- (2) Our title extends to any new item resulting from the processing of the goods. The customer will produce the new item waiving his own rights to the new property and will store it for us. He will not have any claims against us arising from this.
- (3) In the case of the processing of our goods with the goods of other suppliers whose rights also extend to the new item we will acquire a share in the ownership together with the other supplier, but excluding a share in the ownership by the customer, at the full value of the new item (including added-value) as follows:
  - a) Our co-ownership share is equivalent to the ratio of the invoice value of our goods to the total invoice value of all co-processed goods subject to retention of title.
  - b) Where there is a remaining share not affected by ownership rights because other suppliers did not extend their title to added-value by the customer our co-ownership share will be increased by this remaining share. However, where other suppliers also extended their ownership rights to this remaining share we will be entitled to a share in it on the basis of the ratio of the invoice value of our goods to the invoice value of the co-processed goods of these other suppliers.
- (4) The customer hereby assigns to us his claim from the sale of the goods from our present and future deliveries together with all ancillary rights to the extent of our ownership share for security. In the case of processing within the scope of a contract for services the wages claim to the amount of the proportional sum of our invoice for the co-processed goods is hereby assigned to us. Where the customer has payment difficulties we will have the right to collect the claims assigned in advance ourselves.
- (5) As long as the customer duly meets his duties arising from the business relationship he may dispose of goods that are our property in the due course of business and collect the claims assigned to us personally. In the case of delayed payment or legitimate doubts regarding the customer's solvency or creditworthiness we have the right to collect the assigned debts and to take back the goods subject to retention of title; however, there will only be a case of rescission from the contract if we declare this expressly in writing. Where the value of the securities granted to us exceeds our claims by more than 20% we will release securities of our choice upon request by the customer.
- (6) Where the retention of title is not valid according to the foreign law governing the delivery items the respective security payment agreed on for the retention of title in this jurisdiction will be regarded as agreed on. Where participation of the customer is necessary for such a right to be valid he will be obligated to take all measures necessary for establishing and maintaining this right at his expense at the request of the customer.
- (7) In other respects, disposal of the goods subject to retention of title is not permitted, in particular in the case of assignment of collateral or pledging.

## § 10 Place of Jurisdiction, Choice of Law and Final Provisions

- (1) The place of jurisdiction is Nuremberg. However, we have the right to sue the Customer also before the courts of his general place of jurisdiction.
- (2) The laws of the Federal Republic of Germany excluding international law of conflicts, particularly the United Nations Sales Convention will apply to the present GST. The prerequisites for and effects of the retention of title pursuant to § 9 are subject to the laws at the storage site of the item where the choice of German law is not permitted or invalid.