

# Conditions of Sale and Delivery

## § 1 General Remarks

The following conditions are taken as agreed on with the Buyer and govern all contractual agreements, deliveries and services. They also govern all future business transactions with the Buyer. They are in effect only if the Buyer is a businessman (§ 14 of the German Civil Code (BGB)), a juristic person under public law, or a special fund under public law. We do not recognize dispositions which deviate from these conditions without prior written agreement on our part to their validity. This applies in particular for conditions of the Buyer, even when we have not explicitly contradicted them or have carried out the corresponding delivery unconditionally. If our conditions change, they apply in the changed version from the time at which they have first gone to the Buyer and his attention has been called to the changes, and the contractual relationship has thereafter been continued with no contradiction of them.

## § 2 Offer / Offer Documentation

a) Our offer is non-binding unless otherwise specified in the order confirmation. An order on the part of the Buyer, which is an offer in the sense of § 145 of the German Civil Code, can be accepted by us within 2 weeks. If no order confirmation is issued by us, the order is regarded as accepted through delivery and/or invoice.

b) We reserve for ourselves rights of ownership and copyright to drawings, illustrations, calculations and other documentary material. The party placing the order requires our explicit, written approval before passing them on to third parties.

## § 3 Prices

In the absence of any special agreement, our prices apply ex works, including loading at the plant. The amount of value-added tax respectively prescribed by law is to be added to the prices.

## § 4 Delivery Time

a) If the Buyer fails to meet contractual obligations in due time, including obligations of cooperation and secondary obligations such as the provision of documents which are to be furnished by him, the rendering of an advance payment or the like, we are entitled to appropriately defer our delivery dates and deadlines according to the requirements of our production processes.

b) The time of shipment ex works or from the stock area is determinative for adherence to delivery dates and deadlines. If the item to be delivered cannot be sent out in time through no fault of our own, then the time of shipment is replaced by the time of notification of readiness for shipment.

c) The delivery deadline is automatically and appropriately extended by steps taken during the course of labour disputes, particularly in case of a strike and lockout and upon the advent of unforeseen obstacles for which we are not responsible, provided that such obstacles can be shown to have a major impact on the completion or delivery of the item to be delivered. This also applies if the extenuating circumstances arise with sub-suppliers. We will immediately inform the Buyer of the beginning and end of such obstacles.

d) If the agreed-on delivery deadline is not met, the Buyer can set an appropriate subsequent deadline. If in that case there is also no delivery by the time at which the subsequent deadline expires, he is entitled to withdraw from the contractual agreement through a written declaration. If the delay in delivery is due to a breach of contract for which we are responsible, our liability is determined by § 11.

e) We are entitled to fill orders in the form of partial shipments which cannot be rejected by the Buyer, provided that the rest of the deliveries are sent within the period agreed on for rendering the services, or the partial shipments which are sent are not without interest for the Buyer. In a two-way commercial transaction, every partial shipment represents an independent business transaction.

f) No call orders will be accepted for special goods.

## § 5 Passage of Risk

a) The risk of chance loss and chance deterioration of the goods passes to the Buyer at the latest upon consignment from our plant or from our dispatch warehouse (place of performance), and this also in case partial shipments are carried out.

b) If the goods are sent at the Buyer's wish to another destination than the place of performance, then the risk passes to the Buyer at the time of delivery of the goods to the carrier, the freight carrier or any other person or organization commissioned to carry out the dispatch.

c) If we assume the freight charges - either in whole or in part - then we determine the shipping route and means of shipment. If the Buyer wishes another shipping route or another means of shipment, and we meet this wish, then the Buyer assumes the additional costs over that of the cheapest means of shipping.

## **§ 6 Shipment**

In case of delivery „free construction site“, navigable access routes will be assumed; these are such as can be traversed by a heavy, loaded truck-trailer. If the latter are not available, any damage which may occur, and unloading times of more than one hour per truck-trailer, will be charged to the Buyer.

## **§ 7 Terms of Payment**

a) Invoices are due for payment at the latest 30 days after the date of invoicing without a discount, unless another date of payment has been explicitly agreed on. We give a 2% discount of the net value of the goods for payment within 14 days. However, a discount will be given only if no overdue payments are left over from prior invoices.

b) Interest on the purchase price will be charged during the period of delay at the respectively prevailing rate of penalty interest on arrears determined by law. We reserve the right to assert our rights in a court of law for further damages caused by delayed performance. Our entitlement to commercial interest after the due date (§ 353 of the German Commercial Code (HGB)) remains unaffected toward commercial business persons.

c) Checks and bank drafts will be accepted only subject to coverage of the amount and as payment. All discount expenses and exchange charges are to be borne by the Buyer.

d) The Buyer can expect only such counterclaims as are indisputable or are found to be legally valid. The counterclaims of the Buyer in case of deficiencies in delivery remain unaffected.

e) If the Buyer's financial situation deteriorates or extenuating circumstances arise which give reason to doubt his ability to render payment, in particular in the case of bill protests and check protests, delay in payment, payment backlogs from other deliveries, or a dilatory mode of payment, then we are entitled, subject to other rights which we may assert, to demand immediate payment of all still outstanding accounts receivable or the furnishing of a security, and if payment or the furnishing of a security has not followed within an appropriate period of time, to withdraw from the contractual agreement either

fully or in part. The Buyer promises to immediately redeem the bank drafts and checks given to us as payment irrespective of their due dates. Likewise, if the above-named extenuating circumstances become known after order confirmation by the Buyer, we can withhold our services until payment or the furnishing of a security.

f) Failure to meet the payment obligations or impermissible disposal of delivered goods by the Buyer give us the right, subject to further claims, to stop any further delivery to the Buyer until the Buyer has met his payment obligation or the impermissible disposal has been eliminated.

## **§ 8 Securitization**

Until older receivables owed to us on any legal basis by the Buyer now or in future (including all net amounts open and owed on current accounts), the following securitization will be given to us:

a) The goods remain our property (as a conditional commodity). The Buyer is empowered to process and sell the conditional commodity in the course of properly conducted business transactions as long as he is not in default. The impounding or transfer of securitization items are impermissible. It is already agreed at this time that should our (co-owned) property cease to exist due to processing, mingling, or combination with other items, the Buyer's (co-) ownership of the undivided item passes to us in proportion to its value (invoiced value). The Buyer acts as custodian of our (co-owned) property free of charge. Already now, the Buyer makes over to us as securitization wholly or to the amount of any (co-) ownership share all accounts receivable arising from the resale or any other legal basis (insurance, impermissible action) regarding the conditional commodity; we accept this transfer. We revocably empower the Buyer to collect the accounts receivable made over to us for our invoice in his own name. The Buyer promises to disclose the transfer upon demand and to give us the required information and documentary material.

b) In case the Buyer applies for the opening of insolvency proceedings or in case of attempts of third parties to take possession of the conditional commodity, in particular through attachments of property, the Buyer will call attention to our ownership and notify us immediately. The Buyer is liable for costs and damages.

c) In case of actions by the Buyer which are contrary to the terms of the agreement, particularly default of payment, we are entitled to withdraw from the contractual agreement according to the provisions of the

law and to demand that the conditional commodity be turned over on the basis of the reserved ownership right and the Buyer's withdrawal or, as the case may be, to demand that the Buyer make over to us his claim against third parties to have it turned over. If the Buyer does not pay the purchase price which is due, we may exercise these rights only if we have unsuccessfully set the Buyer an appropriate deadline period for payment beforehand or setting such a deadline period is superfluous under the provisions of the law. Goods which have been taken back will be utilized, and the proceeds of the utilization minus appropriate costs for utilization will be applied to the Buyer's debt obligations.

d) If the conditional commodity is installed by the Buyer as an essential component in the landed property of a third party, then the Buyer now already makes over to us the claims to payment of accounts receivable which arise against the third party or whomever is concerned, to the amount of the value of the conditional commodity, with all subsidiary rights, including those to assignment of a debt-securing mortgage (§ 648 of the German Civil Code) and/or claims from already rendered securitization (§ 648 a of the German Civil Code); we accept the transfer. The Buyer is to notify us upon demand whether and when the construction elements which were delivered have been installed. The Buyer is himself authorized to bring about the entry of a debt-securing mortgage but is obligated upon demand to transfer the rights arising from it to us.

e) Should the realizable value of the securitization items which are rightfully ours exceed our full claim by more than 10%, we are obligated upon demand of the Buyer to a return transfer, whereby the selection of the securitization items which are to be released is our obligation.

f) Cash payments, bank transfers or payments by cheque which take place upon the sending of a bill of exchange issued by us and accepted by the Buyer are valid for fulfilment according to Sentence 1 when the bill of exchange has been made good by the person upon whom it is drawn and we are thereby released from liability for the bill of exchange.

### **§ 9 Liability for Defects**

Our liability for defects is as follows:

a) In case of deficiencies in the items delivered, we are initially obligated and entitled, as we choose within an appropriate period of time, to carry out afterwork or a replacement delivery. In case this fails, particularly in case of impossibility, unacceptability, refusal or an inappropriate delay of afterwork or replacement

delivery, the Buyer can withdraw from the contractual agreement or appropriately reduce the purchase price. If a deficiency results from a circumstance for which we are responsible, the Buyer can demand compensation for damages under the preconditions set forth in § 11.

aa) The required quality is the average quality of the manufacturer's production facilities at the time of delivery unless otherwise agreed on. Deviations in shades of colour, e.g. of samples, are technically unavoidable and remain an exception to this.

ab) Reference to DIN-standards basically contains the more precise designation of goods and is not grounds for a promise of a specific state of the goods unless this was explicitly promised in writing.

ac) In view of the constant progress of technology, the illustrations and the comments in the catalogue, in the price list, and on our homepage are preliminary and non-binding.

b) Our liability for defects presupposes that the client has properly met his obligation to carry out an inspection and to lodge a complaint according to § 377 of the German Commercial Code. Complaints about evident defects are to be specified and lodged in writing within a period of 10 calendar days at most after receipt of the goods. The same deadline period for lodging a complaint applies for hidden defects or such as become evident at a later time, calculated from the moment of their discovery. If under these conditions there is no notification of defects or a delay in one, the warranty obligation is forfeited in this regard.

c) It is up to the Buyer to observe whether the goods were damaged during transport and whether the quantities are correct. If the goods are not inspected at the time they are taken possession of or unloaded, and goods which have recognizably been damaged during transport are then installed, we have no liability for this. Any defects must be acknowledged by us in writing. Parts replaced are to be sent back to us upon demand.

d) In all cases, the special provisions of the law remain unaffected upon final delivery of the goods to a user (supplier regress acc. to §§ 478, 479 of the German Civil Code).

### **§ 10 Product Security**

We are not liable for damages which are attributable to faulty application or inappropriate installation of our products, provided that we are not responsible for this. We explicitly call attention to the fact that the

goods may be used only for the intended use which has been contractually specified or is normal for such products. In this connection, strict compliance is to be maintained with the pertinent regulations, in particular the prevailing construction regulations and the documented areas of application and the construction requirements contained in permits of the building supervision authorities, type tests, and the technical documentation papers. Processing and installation instructions which are enclosed or glued in place, or - in the absence of such - a use of the products in accordance with the current status of science and technology are always to be observed.

#### **§ 11 General Limitation of Liability**

a) We are unreservedly liable according to the provisions of the law when damage is based on gross negligence or premeditation, or when liability is assigned according to the product liability law, or a deficiency has been fraudulently concealed, or a guarantee has been taken over for the status of the item or damage to persons (injury to life, limb and health) is involved.

b) In case of culpable violation of essential contractual obligations, we are otherwise liable only for typical contractual and foreseeable damage. Essential contractual obligations in this sense are obligations which protect the Buyer's essential contractual legal positions, which the contractual agreement is precisely designed to ensure to him according to its contents and purpose; in addition, essential contractual obligations are those whose fulfilment basically makes it possible to properly abide by the contractual agreement and in whose fulfilment the Buyer has normally placed his trust and may so trust.

c) To the extent that liability is excluded or limited, this also applies for the personal liability of our respective salaried and wage-earning workers, employees, representatives and assistants.

#### **§ 12 Court of Jurisdiction, Applicable Law**

a) If the Buyer is a commercial agent, a juristic person under public law or a special fund under public law, the Court of Jurisdiction for all litigation resulting from contractual relationships between the Buyer and us is Baden-Baden, whereby In this case we are also entitled to bring suit in the Buyer's General Court of Jurisdiction.

b) The German Text of these conditions and our order confirmation are constitutive. The law of the Federal Republic of Germany governs to the exclusion of applicability of the unified International „United Nations Convention on Contracts for the International Sale of Goods“ (CISG).

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