

## **General Delivery Terms**

### **§ 1 Scope of Application – General**

- (1) Our general delivery terms (TAC) apply to deliveries and services - also to information and consulting - to entrepreneurs within the meaning of § 14 German Civil Code, i.e. to individuals or legal entities who use the goods or service for commercial or professional use, as well as to legal entities under public law or public-law special funds. In this, it is not essential if the client is headquartered domestically (Federal Republic of Germany) or abroad.
- (2) Our TAC shall apply exclusively; we do not accept any contrary terms or terms of the client that deviate from our TAC, except if we have expressly agreed to their application. Our TAC shall apply even if we perform the delivery and service without reservations in spite of knowing of contrary terms or terms of the client deviating from our terms and conditions.
- (3) Where the following speaks of text form, both written form and the form described in § 126b German Civil Code shall be admissible, i.e. specifically also telefax or email.
- (4) Where the following speaks of damages claims, these shall equally include claims to replacement of expenses within the meaning of § 284 German Civil Code.

### **§ 2 Conclusion of Contract – Statements– Rights – Prohibition of Assignment**

- (1) The client's order shall be a binding offer. Any offers or cost estimates made by us before this shall be subject to confirmation; they are requests for placing orders. We may accept any orders or purchase orders within fourteen calendar days after we receive them, provided that the client does not usually have to expect later acceptance by us (§ 147 German Civil Code). This shall also apply to re-orders placed by the client.
- (2) Acceptance of an order or purchase order by us shall take place provided that any unpaid payment arrears of the client have been settled and that any credit check performed by us concerning the client does not render a negative response. In case of deliveries or services within the commitment period of the client (see paragraph 1 sentence 2), our acceptance of the order may be replaced by our delivery, dispatch of the delivery being relevant.
- (3) Oral agreements by our representative or other agents shall require our written confirmation.
- (4) Legally relevant declarations and indications that the client must make towards us or a third party shall require written form.
- (5) We reserve all title and copyright in any figures, drawings, data, calculations, templates and other documents concerning our products and services. This shall also apply to such documents that are marked as confidential. The client shall require our express written consent for utilising these or

passing them on to any third parties; otherwise, both shall be forbidden. The documents named in sentences 1 and 2 shall be returned to us as far as no orders based on them are placed with us.

(6) We reserve the right to secure any transactions via credit insurances and to transmit the required data from the client and for the contractual relationship to the insurer.

(7) The client shall not have the right to transfer any contractual claims without our written consent unless the provisions of § 354a German Commercial Code apply.

### **§ 3 Object of the Contract and Performance – Goods Quality**

(1) Information and declarations concerning our products and services by us or our sales agents shall be given solely based on our experience to date. In the absence of any explicit other agreement, we shall specifically not be responsible for the products and/or services delivered by us being suitable for the procedures, applications and other purposes of the client in case of delivery of goods specifically requested or described or specified in detail.

(2) We shall only take over any consulting obligation by way of a separate consulting contract in text form.

(3) The information provided by us on the object of the delivery or the service (e.g. weight, dimensions, usage values, resilience, tolerances and technical data) as well also our presentations of the same (e.g. drawings and figures) are only approximates and to be considered averages provided that the usability for the contractually specified purpose does not require precise correspondence.

(4) The properties of samples or test specimen shall only become part of the contract if this was expressly agreed in text form.

(5) There shall be no guarantees other than those expressly accepted by us in the contract. In particular, descriptions of the object of the contract or the object of the delivery and service, property specifications and technical data shall not be understood as property guarantees. A guarantee shall only be deemed assumed if we have designated a property and/or performance result as "legally guaranteed" at least in text form.

(6) The client may only pose quality-related claims to the ordered goods at the amount that can reasonably or commonly be applied to goods priced as those ordered. The German standard shall be essential for the goods quality owed.

(7) Commercially common deviations and deviations due to legal provisions or that constitute technical improvements, as well as replacement of parts by parts of equivalent value shall be permitted in the delivered goods, and shall not entitle to any complaints and claims towards us, as far as they do not impair usability for the contractually specified purpose and any agreed specifications are complied with. The above shall also apply in case of sale of a goods sample.

### **§ 4 Prices**

- (1) The prices shall apply to the agreed scope of services and deliveries. Additional or special services shall be settled separately.
- (2) The prices are stated in Euro ex works, plus packaging, statutory VAT, customs duties for export deliveries and fees as well as other public charges.
- (3) If the delivery or service takes place more than four months after conclusion of the contract and if the costs for wages, materials, packaging materials, freight, taxes or charges have increased in the meantime, the agreed price may be adjusted according to the influence of the above cost factors. As far as the agreed prices are based on our list prices and the delivery or service is to take place more than four months after conclusion of the contract, our list prices applicable at the time of delivery shall apply (each minus an agreed percentage or fixed discount). If the price changes by more than 20% as compared to the contractually agreed price, the client shall have the right to withdraw from the contract if we insist on a demand to increase the price in spite of announcement of the withdrawal intention. If a delivery or service is rendered specifically for the client, withdrawal shall be excluded.

## **§ 5 Payment Terms**

- (1) If not indicated or agreed with us differently, remuneration shall be due at once and in full, without deduction of any discount, after receipt of the goods or the other service.
- (2) The client shall only have any right to set-off if his counter-claims have been finally determined, are undisputed or recognised by us.
- (3) Any right of retention on the side of the client shall be excluded unless the client's counter-claim comes from the same contractual relationship and is undisputed or has been finally determined.
- (4) If a client enters default of payment of a due claim, any further claims that we have against the client from any other legal relationships and that have already arisen shall fall due immediately as well; in that case, any payment targets granted by us, deferrals or similar payment aids shall therefore expire. We shall also have the right to retain any services that we still have to render in this case.
- (5) If it becomes evident after conclusion of the contract that our claim to the purchasing price is endangered by the client's inability to perform (e.g. by application for opening of insolvency proceedings), we shall have the right to refuse the performance and -if applicable after setting of a grace period - to withdraw from the contract (§ 321 German Civil Code). In case of contracts for the production of specific items (custom productions), we may declare withdrawal at once; the statutory provisions on the waiver of setting a grace period shall not be affected.

## **§ 6 Service and Service Time**

- (1) Binding dates for deliveries or services shall require our written confirmation for the purpose of evidence. As far as any contribution obligation of the client must be met, any agreed performance deadline shall not commence before the client has met this obligation. Compliance with payment

agreements shall be a contribution obligation within this meaning as well. Furthermore, the performance deadline shall extend automatically if the client does not meet his contribution obligations within the agreed period. The agreement must be entered in writing. It does not need to be confirmed by the client; however, it must be appropriate.

(2) We have the right to make over- and under-deliveries of up to 5% of the agreed delivery amount.

(3) We have the right to make partial deliveries if

- the partial delivery can be used by the client within the scope of the contractual purpose,
- delivery of the remaining ordered goods is ensured and
- the client does not incur any considerable additional effort or additional costs for this (except if the client agrees to bear these costs).

(4) If we do not receive any deliveries or services from subsuppliers or subcontractors for any reasons that are not due to our fault in spite of proper coverage, do not receive them properly or not in time, or in case of any events of force majeure, we shall inform the client in time. In this case, we shall have the right to delay the delivery or service by the term of the impairment or withdraw from the part of the contract that has not yet been met wholly or in part as far as we have met our information obligation described above. Strike, lock-out, authority actions, scarcity of energy and raw materials, transport bottlenecks caused without fault, operating impairment caused without fault, e.g. due to fire, water and machine damage, and any other impairment that has not been caused culpably by us from an objective point of view shall be equivalent to force majeure.

(5) If a delivery or performance date or a delivery or performance deadline has been bindingly agreed and if any events according to the above paragraph 4 cause the agreed delivery or performance date or the agreed delivery or performance deadline to be exceeded by more than two months, or if compliance with the contract is objectively unreasonable for the client in case of a non-committal performance date, the client shall have the right to withdraw from the part of the contract not yet performed. If a delivery or service is rendered specifically for the client, withdrawal shall be excluded. The client shall not have any further rights, and specifically no claims to damages, in this case.

## **§ 7 Default of the Contractor**

(1) As far as assertion of the client's rights requires setting of an appropriate grace period, this shall be at least two months.

(2) If we enter default, our liability for replacement of the default damage shall be limited to 5% of the contractual price in case of simple negligence. Further claims of the contractor shall not be affected.

(3) Contractual penalties due to delayed delivery or service shall be excluded.

## **§ 8 Responsibility in Case of Indeterminate Obligations and Withdrawal**

- (1) As far as the object to be delivered is only determined by indeterminate features, we shall only be liable for replacement of a damage if we do not document that we are not at fault for non-performance, delayed delivery or malperformance. The provisions of § 12 of the TAC shall apply additionally.
- (2) Within the scope of the statutory provisions, the client must only withdraw from the contract if we are at fault for the violation of obligations.

## **§ 9 Performance – Passing of Risk – Acceptance**

- (1) The delivery shall take place ex works, which shall also be the place of performance. Upon the request and expense of the client, the goods shall be sent to another destination (sales shipment). If nothing different has been agreed, we shall have the right to determine the type of shipment (specifically the transport company, shipping route, packaging) directly.
- (2) The shipment shall only be insured by us against theft, breakage, transport, fire and water damage or any other insurable risks, at the client's express wish and at the client's expense.
- (3) The risk of accidental destruction and accidental deterioration of the goods shall only pass to the client at handover. In case of a sales shipment, however, the risk of accidental destruction and accidental deterioration of the goods, as well as the risk of delays shall pass at delivery of the goods to the forwarder, carrier or the other person or institution intended to execute shipping.
- (4) If an acceptance test has been contractually agreed, it shall be performed at the place of production during the regular working times.

## **§ 10 Default of the Client**

- (1) If the client enters default of acceptance, if he neglects any contribution obligation or if our delivery is delayed for any other reason due to the client's fault, we shall have the right to demand replacement for the damage resulting from this, including additional expenses (e.g. storage costs). For this, we shall charge flat-rate damages at 0.25% of the amount invoiced for the delivery objects to be stored per completed week, starting with the delivery deadline or - if there is no delivery deadline - with the notification of readiness for shipments of the goods. Evidence of a higher damage and our statutory claims (in particular replacement of additional expenses, appropriate compensation, termination) shall not be affected; the flat rate shall be set off against any further monetary claims. The client shall have the right to prove that we have not incurred any damage or that we have incurred a damage that is considerably below the above flat rate.
- (2) If acceptance of the goods or their dispatch is delayed due to any reason for which the client is at fault, we shall, at our choice, have the right to demand immediate payment of the remuneration after setting and expiration of a grace period of fourteen days, or to withdraw from the contract or to refuse performance and demand damages instead of the full performance. In case of the above damages claims, we may claim 15% of the agreed net remuneration for the costs resulting from

processing of the order and for lost profit. If a delivery or service is specifically rendered for the client, we may claim 100% of the agreed net remuneration for the costs resulting from processing of the order and for lost profit. The client shall have the right to prove that we have not incurred any damage or that the damage incurred was considerably lower than the flat rate.

#### **§ 11 Claims in Case of Defects (Warranty) – Expiration**

- (1) The client shall observe the obligations of § 377 German Commercial Code. Any defects that are evident at delivery also must be reported to the transport company and recording of the defects must be initiated by it. Complaints about defects must contain a description of the defect that is to be detailed as far as possible. If no complaint is issued in time, any claims of the client shall be excluded.
- (2) We do not assume any liability for any public statements, descriptions or advertisements of any other manufacturer or other third party; they shall not be any contractual property indication for the goods.
- (3) After commencement of processing, finishing, merging or merging with other objects, the delivered goods shall be deemed contractually approved by the client. This shall apply accordingly in case of further shipment from the original destination.
- (4) The client's claims for defects of material shall be excluded for the consequences of defective use (in particular if the assembly does not comply with the state of the art or in case of assembly contrary to the assembly instructions) or due to natural wear of the goods, excessive use or unsuitable equipment, as well as the consequences of physical, chemical or electrical influences that do not comply with the intended average standard influences.
- (5) The client's claims due to expenses required for subsequent performance, in particular any transport, travelling, labour and material costs, shall be excluded as far as the expenses increase because the goods delivered by us have been subsequently taken to any other location than the client's branch, except if transport corresponds with their intended use.
- (6) Any recourse claims of the client in case of further sale of the goods (supplier recourse in the supply chain) shall only apply against us as far as the client has not entered into any agreements exceeding the statutory claims for defects with his purchaser. Such recourse claims are excluded if the client has processed or finished the goods delivered by us or otherwise changed them, unless this corresponds to the contractually agreed purpose of the goods.
- (7) Acceptance of violations of obligations in the form of defects of material shall always require text form.
- (8) The period of expiration for claims from defects shall be 12 months from the day of passing of the risk (see § 9 para. 3 and 4 of the TAC), and in case of refusal of receipt or acceptance by the client from the time at which readiness for goods transfer is reported. This shall not apply in case of building contracts, for objects that have been used for a building according to their general use and that have caused the building to be defective, in case of claims due to violation of life, body and health, in case of at least grossly negligent violations of obligations by us or any of our legal

representatives or agents and in case of damages claims from a guarantee. This also shall not affect the statutory specification provisions for material release claims of third parties, in case of malice on the side of the seller and in case of claims from supplier recourse if the final delivery is made to a consumer.

## **§ 12 Liability for Damages**

- (1) We shall be liable for damages without limitation – no matter the legal basis:
  - a) in case of wilful intent,
  - b) in case of culpable violation of life, body or health,
  - c) in case of default, provided that a fixed delivery and/or performance time was agreed,
  - d) in case of defects that we have maliciously concealed or the absence of which we have guaranteed,
  - e) in case of defects of the object of delivery, as far as liability for injury or property damage applies under the Product Liability Act in case of objects used privately.
- (2) We shall also be liable in case of culpable violation of essential contractual obligations, but this shall be limited to the damage that we have foreseen as a possible consequence of violation of the contract or that we would have had to foresee under observation of the common care in business and that is typically expected at intended use of the delivered object in case of simple negligence.

Essential contractual obligations shall be such obligations that protect essential contractual legal entitlements of the client that the contract specifically is intended to grant him according to its content and purpose and such obligations the performance of which is require for proper performance of the contract and the compliance with which the client has regularly trusted in and may trust in.
- (3) We shall also be liable for damage caused by gross negligence. However, if any other than essential contractual obligations are violated, and if other legal assets than life, body or health are affected, our liability in case of gross negligence shall also be limited to the damage that we have foreseen as a possible consequence of violation of the contract or that we would have had to foresee under observation of the common care in business and that is typically expected at intended use of the delivered object.
- (4) Further claims are excluded.
- (5) The exclusions and limitations of liability named in paragraphs 1 to 4 shall also apply to the corresponding violations of obligations of our servants.
- (6) As far as liability for damages is excluded or limited concerning us, this shall also apply concerning the personal liability of our committees, legal representatives, employees and other agents for damages.

### **§ 13 Reservation of Title**

- (1) Until complete payment of all of our current and future claims from the contract and from any ongoing business relationships (secured claims), we reserve title in the sold goods.
- (2) The goods subject to reservation of title must not be pledged to any third parties before complete payment of the secured claims, nor transferred as collateral. The buyer shall inform us in writing without delay if and as far as third-parties access the goods belonging to us. This shall also apply to impairment of any other kind. Independently of this, the client shall inform the third parties of the rights existing in the goods beforehand. The costs for intervention by us shall be assumed by the client, as far as the third party is unable to reimburse them.
- (3) The client shall have the right to sell and/or process the goods subject to reservation of title in the proper course of business. In this case, the following provisions shall apply supplementarily:
  - a) The reservation of title shall also cover the products resulting from processing, mixing or merging of our goods at their full value, and we shall be deemed the manufacturer. If any third party's property rights are preserved after processing, mixing or merging with third-party goods, we shall acquire shared title at a ratio of the values invoiced for the processed, mixed or merged goods. Apart from this, the resulting product shall be subject to the same rules as the goods delivered subject to reservation of title.
  - b) The client hereby assigns any claims resulting against third parties from the further sale of the goods or the product to us as collateral in full or at the amount of any co-property share according to the above paragraph a). We accept the assignment. The client's obligations named in paragraph 2 shall apply in light of the assigned claims as well.
  - c) The client shall remain entitled to collect the claim in addition to us. We commit to not collecting the claim while the client meets his payment obligations towards us, does not enter default of payment, no application for opening of insolvency proceedings has been filed and there is no other defect of his ability to perform. However, if this is the case, we may demand that the client inform us of the assigned claims and their debtors, provide all information required for collection, hand over the associated documents and inform the debtors (third parties) of the assignment.
  - d) If the value that can be realised from the collateral exceeds our claims by more than 10%, we shall release collateral at our choice upon the client's demand.

### **§ 14 Software Use**

- (1) As far as the delivery includes any software, the client is granted a non-exclusive right to use the delivered software, including its documentation. It shall be provided for use on the specified delivery object. Use on more than one system is forbidden in the absence of explicit other specifications from case to case.
- (2) The client must only reproduce, revise, translate or convert the software from object code to source code at the legally permitted scope (§§ 69a et seqq. UrhG). The client commits to not



removing any manufacturer's information -specifically any copyright notes - or to change them without our advance explicit agreement.

(3) Any other rights in the software and the documentation, including the copies, shall remain with us or with the software supplier. The awarding of sublicenses shall not be permitted.

### **§ 15 Third-Party Property Rights**

(1) If a third party raises any claims against the client due to infringement of commercial property rights or copyrights (hereinafter: property rights) by the products delivered by us and if the contractual use of the products by the client is impaired or forbidden due to this, the client shall inform us of this without delay. The client shall not accept the alleged infringement and shall only conduct any dispute with the third party concerning the violation of property rights in agreement with us. If the client ceases use of the product in order to reduce damage or for any other important reasons, he shall be obligated to inform the third party that the cessation of use does not include acceptance of the infringement of property rights.

(2) The client shall not have any claims due to infringement of property rights as far as the infringement of property rights is due to his own fault, based on specific specifications of the client (e.g. due to production documents that he has provided to us), due to application not intended in the product documentation or caused by the product having been changed by the client or used together with products not delivered by us. If any third party raises any claims against us due to infringement of such property rights, the client shall be obligated to indemnify us against such claims, including the process costs and any other expenses.

### **§ 16 Choice of Law - Place of Jurisdiction**

(1) The law of the Federal Republic of Germany shall apply, subject to exclusion of the standards that refer to any other legal order, and UN sales law (CISG).

(2) For any disputes resulting from the contractual relationship, the claim shall be raised before the court competent for our registered office. We also shall have the right to raise a claim at the client's registered office.

As of: 24 May 2018