

## Terms and Conditions of Delivery

### 1. Scope

- 1.1 These General Terms and Conditions of Delivery are applicable only in relation to entrepreneurs in the meaning of § 14 of the German Civil Code (*BGB*).
- 1.2 All our deliveries and services are exclusively supplied in accordance with these General Terms and Conditions of Delivery. Customer's conditions contrary or deviating therefrom shall not be recognized, unless we have explicitly consented to their validity. These Terms and Conditions of Delivery also apply to future business even if they are not specifically referred to an individual case.

### 2. Offer and Order

- 2.1 Our offers are non-binding unless they have explicitly been stated as a binding offer. Offers shall be subject to change without notice. Documents enclosed with an offer, such as drawings, specifications etc., shall only be binding if they have been expressly confirmed by us as such.
- 2.2 The order is determined by our written order confirmation which may also be issued by the sending of an invoice together with the goods. If the customer should object to the contents of the order confirmation, he must immediately contest the order confirmation. Otherwise the contract will be concluded in accordance with the order confirmation.
- 2.3 Technical changes which are immaterial, serve the improvement, or do not exceed the tolerances customary in trade are reserved. This does not apply where certain qualities have been explicitly guaranteed.

### 3. Prices and Payment

- 3.1 The prices set forth in the order confirmation shall control. Unless otherwise agreed upon, our prices are ex works and do not include packaging, freight, insurance, duties and VAT.
- 3.2 Unless otherwise agreed upon, our invoices are immediately payable net without any deductions.
- 3.3 Drafts or checks shall only be accepted on account of payment (*Zahlungshalber*) pursuant to an explicit agreement, however, never in lieu of payment (*an Zahlungs statt*). Any fees and costs arising in connection therewith shall be paid by the customer.
- 3.4 Only an uncontested or non-appealably established counter-claim may be set off by the customer. The customer shall only be permitted to exercise a right of retention if such right is based on the same contractual relationship.

### 4. Delivery

- 4.1 The risk of accidental loss or accidental deterioration of the goods shall pass upon the customer at the time of the handing over of the goods, in case of shipment with the consignment to the shipping agent.
- 4.2 If the manner of shipment, route, and / or shipping agent are selected by us, we shall only be liable for being grossly at fault in the respective selection.
- 4.3 We have the right to perform partial deliveries to an equitable extent and to separately invoice such deliveries.
- 4.4 Binding delivery periods must be specifically agreed upon. If a delivery period or delivery date is agreed, their observance presupposes that the customer fulfills its contractual obligations.
- 4.5 The customer shall only be permitted to withdraw from the contract for exceeding the periods of delivery if he has previously set a reasonable grace period with a threat of refusal, and if delivery has not been made within such period. This shall not apply if setting of a period of notice is not required according to § 323 sect. 2 of the German Civil Code (*BGB*).
- 4.6 If we are in delay of delivery we shall be liable for damages caused to customer by such delay, if we are grossly at fault. For simple negligence our liability for damages caused by delay is restricted to a compensation for each full week of delay of 0,5 %, not to exceed however 5 % of the price for that portion of the deliveries which could not be purposefully used due to the delay. Further thereto, we shall be liable for damages caused by delay in cases of simple negligence only after the date of expiration of the reasonable grace period according to above 4.5.

### 5. Reservation of Ownership

- 5.1 We reserve ownership to all goods delivered by us until full payment of all claims arising from the entire business relationship. These claims include also claims based on checks and drafts and claims from current accounts. If a liability arising from a draft should be caused for us in connection with the payment, the reservation of ownership does only expire after our liability arising from the draft has been excluded.
- 5.2 Our taking back of an item delivered by us does not represent a withdrawal from the contract, unless this has been explicitly stated by us.
- 5.3 The customer shall be entitled, subject to a revocation permitted for good cause, to dispose of the item delivered within the scope of an ordinary course of business. In the event of a resale, the customer at this time already assigns to us all claims arising from the resale, especially claims for payment but also other claims in connection with the resale, in the final amount of the invoice (including VAT). This shall apply regardless of the fact whether the item delivered has been resold without or after reprocessing.
- Until revocation by us permitted for good cause the customer shall be entitled to collect the assigned claims as a trustee. We shall be entitled for good cause to notify third party debtors of the assignment of claims also in the name of the customer. With the notification of the assignment of claims to the third party debtor the entitlement of customer to collect ceases. In the event of a revocation of the entitlement to collect we may request that the customer shall inform us of the assigned claims and their respective debtors, provides all information needed for collection, hands over all relevant papers, and informs the debtors of the assignment.
- 5.4 Processing and remodeling of the item delivered by the customer shall always be performed for us. We are deemed to be the manufacturers as provided for by § 950 of the German Civil Code (*BGB*) without any further obligation. If the item delivered is processed together with other objects not belonging to us, we shall acquire the joint ownership in the new item in the proportion of the value of the item delivered to the value of the other processed objects at the date of processing. The same conditions which are applicable to the items delivered with reservation of ownership also apply to the item produced by processing.
- 5.5 If the item delivered is merged or mixed with other objects not belonging to us we shall acquire joint ownership to the new item in the proportion of the final amount of the invoice of the item delivered to the value of the other merged and / or mixed objects at the date of merging or mixing. If merging or mixing is performed in a manner that the object of the customer is considered as the primary object, it is deemed as agreed upon that the customer shall assign to us proportionate joint ownership. The customer shall keep in custody for us the item of sole or joint ownership.

### 6. Defects

- 6.1 The customer shall be obliged to immediately inspect each shipment at arrival or receipt and immediately complain in writing to us of any recognizable defects. Hidden defects shall be complained of in writing immediately after their discovery. Otherwise the shipment shall be deemed as accepted.
- 6.2 Unless otherwise agreed upon in writing in an individual case, we do not assume any guarantee for the condition of the goods nor any guarantee for durability. A use assumed in the contract may only be valid if a written agreement has been concluded in this respect.
- 6.3 If there is a defect for which we have to answer, we have the right to subsequent performance (*Nacherfüllung*) by opting either to repair the defect or supply an item free of defects. If we should refuse subsequent performance, if subsequent performance failed, or if the customer cannot be expected to agree to it, the customer has the option of either withdrawing from the contract or requesting a price reduction.
- 6.4 Claims for defects of the customer will expire within 12 months from the date of delivery and / or performance of service. This does not apply if the statutes provide for longer periods, in the event of malicious intent, and in cases of recourse of the entrepreneur.
- 6.5 Unless otherwise agreed upon in writing with customer, we give no warranty whatsoever that the goods, their manufacture or our other services provided hereunder comply with the U.S. Food and Drug Administration or any other similar regulatory body. Customer maintains the final and sole responsibility for the good's suitability and compliance with legal prerequisites for the use intended by customer.

### 7. Damages

- 7.1 We are liable for intent and gross negligence. We are only liable for simple negligence if essential obligations of the contract have been violated which arise from the nature of the contract or whose violation jeopardizes the reaching of the purpose of the contract. Also in these cases, the damages are restricted to the foreseeable damage which is typical for the contract. In other respects, all claims for damages of the customer in the event of simple negligence, regardless on which legal ground, are excluded.
- 7.2 The foregoing restriction of liability does not apply to claims under the Product Liability Law, in the event of injury to life, body, or health.
- 7.3 The restriction of liability furthermore does not apply to claims for damages for defects if a defect has been intentionally concealed by us or if we have assumed a guarantee for the condition of the product. The provisions of 6.4 shall apply accordingly to the limitation of claims for damages for defects.

### 8. Intellectual Property Rights

- 8.1 Drawings, specifications, technical delivery conditions or any other information given to us by customer shall not be verified by us with regard to any possible breaches of intellectual property rights of third parties. Orders of customer based on such information shall be executed at the risk of customer. Customer shall indemnify, defend and hold us harmless from and against any damages, liabilities, costs and expenses (including attorneys' fees and court costs) if any infringement of third party intellectual property rights occur as a result.

### 9. Place of Jurisdiction, Place of Performance and Applicable Law

- 9.1 Place of performance of delivery and payment for both parties is the principal seat of business of our company.
- 9.2 These General Terms and Conditions of Delivery and all questions and legal relationships ensuing from them are exclusively governed by German law, under exclusion of its conflicts of laws rules and the CISG.
- 9.3 For merchants, exclusive place of jurisdiction for all legal disputes arising out of or in connection with this contractual relationship and its conclusion and effectiveness for both parties is Pforzheim. We shall have the option to commence proceedings at the principal seat of business of the customer.
- 9.4 In case of discrepancies between the English version of these Terms and Conditions of Delivery and the German version (which we will readily provide to you upon request), the German version prevails.