

# Terms & Conditions

## 1. General

1.1. We deliver exclusively in accordance with the following conditions of sale, delivery and payment (Terms & Conditions). These also apply to future transactions with the customer and even if no express reference is made to them in a subsequent transaction.

1.2. Our conditions apply exclusively; we do not recognise the customer's conditions – in particular, conditions of purchase – that may contradict or deviate from our own unless we have expressly agreed to do so in writing. Our conditions also apply if we complete delivery to the customer without reservation in the knowledge of the customer's contradictory conditions or conditions that deviate from our own.

1.3. Our offers are subject to change. Orders only become binding for us when we confirm them or fulfil them by shipping the goods.

1.4. We sell exclusively to merchants, legal persons under public law and special funds under public law who use the goods exclusively in their independent, professional, commercial, administrative or official activities. Our conditions therefore also apply only to such merchants and legal persons.

1.5. All agreements made between us and the customer for the purpose of the execution of this contract are set down in writing in this contract.

## 2. Purchase prices

2.1. The goods are invoiced at the prices valid on the date of the order confirmation, plus the statutory VAT that applies to them.

2.2. If, however, a delivery period of more than 4 months from the date of our order confirmation is agreed or if delivery of the goods cannot be completed until more than 4 months after the confirmation of the order for reasons for which the customer is responsible, we are entitled to charge the prices that apply on the date of delivery.

## 3. Electronic invoicing

3.1 The client shall agree to receive invoices electronically. Electronic invoices shall be sent to the client's registered email address in PDF format. The client may reject the sending of electronic invoices at any time.

## 4. Conditions of payment, discount

4.1. Subject to alternative written agreement, our invoices are due for payment to us immediately on receipt and without any discount, at the latest by the final payment date specified on the invoice, and free of all charges. We reserve the right to only deliver subject to payment in advance.

4.2. The customer is in default on receipt of a reminder after the due date, without a reminder on

expiry of the payment date specified on the invoice, and at the latest 30 days after the due date and receipt of an invoice. We are entitled to charge €2.50 for every reminder. We reserve the right to charge the flat fee of €40 in accordance with § 288 para. (6) of the German Civil Code. If the customer is in default on payment of an invoice, all of our claims against the customer under the business relationship are due for payment immediately. We are then only obliged to make further delivery in return for payment in advance.

4.3. Acceptance of cheques and bills of exchange is at our discretion and always only on account of payment. In the case of bills of exchange, the fees and costs and the risk of prompt presentation and protest are borne entirely by the customer.

4.4. Discounts require an express agreement with us. Discount can only be granted if the payment is received by us at the agreed time or the time specified on the invoice.

## 5. Offsetting and right of retention

5.1. The customer only has rights to offset if his counterclaims are legally established, uncontested or recognised by us. The customer is also entitled to exercise a right of retention insofar as his counterclaim results from the same contractual relationship.

5.2. If the customer is a merchant, he is entitled neither to raise the objection of non-fulfilment of the contract nor to exercise a right of retention for counterclaims.

## 6. Delivery time, prevention of delivery, force majeure

6.1. We make every attempt to meet your requirements regarding delivery times. Binding delivery times require separate written agreement.

6.2. Compliance with our delivery obligation presupposes prompt and proper fulfilment of the customer's obligations. We reserve the right to raise the objection of non-fulfilment of contract.

6.3. If the customer is in default of acceptance or culpably breaches other cooperation obligations, we are entitled to demand compensation for the losses incurred, including any additional expenses. We reserve the right to assert other claims or rights.

6.4. Insofar as the prerequisites under 6.3. have been met, the risk of accidental destruction or accidental deterioration of the purchased item is transferred to the customer at the time that the latter defaults on acceptance or debts.

6.5. If we default on delivery for reasons for which we are responsible and if the default is the result of malicious intent or gross negligence or if this constitutes the breach of a material contractual obligation, statutory liability applies. In the case of merely negligent breach of obligation, however, this is limited to the losses that can be envisaged. If the default of delivery is the result of minor negligence, our liability is limited to a maximum of 15% of the value of the delivery.

6.6. If the customer sets us an appropriate period of grace following our default of delivery, he is

entitled to withdraw from the contract if that period elapses without success; the customer is only entitled to claim compensation for non-fulfilment in the amount of the foreseeable damage if the default is the result of malicious intent or gross negligence or of the breach of a material contractual obligation; otherwise the liability for compensation is limited to 50% of the losses incurred.

6.7. The limitations to liability under 6.5. and 6.6. apply only insofar as a fixed commercial transaction has been agreed; it also does not apply if the customer can assert on the basis of the default for which we are responsible that the immediate assertion of the claim for compensation comes into consideration in place of performance.

6.8. Cases of force majeure suspend the contractual obligation of the parties for the duration of the disruption and to the extent of its impact. If the delays arising from it exceed a period of 6 weeks, both contracting parties are entitled to withdraw from the contract in respect of the scope of services concerned. Other claims do not exist.

6.9. If we submit client cost invoices to carriers, freight forwarders or other transport companies, this is on a voluntary basis without any legal obligation, and it does not mean that we believe these invoices are justified or would be obligated to settle these invoices.

## 7. Reservation of title

7.1. We reserve title to the goods delivered.

7.2. The reservation of title under 7.1. remains in place until payment of all of our claims under the business relationship. This also applies if individual invoices have been paid by the customer.

7.3. If the customer behaves in breach of contract, in particular in defaulting on payment, we are entitled to recover the purchased item. Recovery of the purchased item by us entails withdrawal from the contract. On recovery of the purchased item, we are entitled to sell it; the sales revenue shall be offset against the customer's obligations – less appropriate selling expenses. We are entitled to make deductions of up to 20% on the invoice amount for the recovered goods without providing evidence, provided that the customer does not demonstrate that no loss in value or a significantly smaller loss has come about.

7.4. The customer is obliged to treat the purchased item with care; in particular, he is obliged to insure it against fire, water damage and theft at his own expense and for its original value. Insofar as maintenance and inspection work is required, the customer must carry them out promptly at his own cost. The customer is obliged to compensate us for any type of further loss of value that the delivered goods suffers with him.

7.5. The customer is entitled to dispose of the reserved goods in the normal course of business unless an exclusion of assignment has been agreed between him and his customer regarding the claims from the delivery.

7.6. The reservation of title also extends to the products created as a result of processing, mixing or combining our goods at their full value, in which case we act as the manufacturer. If, in the event of

processing, mixture or combination with goods of third parties whose right of ownership still applies, we shall be granted co-ownership in the ratio of the invoice values of those processed goods.

7.7. The customer hereby assigns the claims against third parties resulting from the resale in whole or in the amount of our co-ownership share in accordance with 7.6. as security. He is entitled to make collection of these for our rights until revocation or cancellation of his payments to us. The customer is also not entitled to transfer these claims for the purpose of collecting such claims by means of factoring, unless the obligation of the factor to render return services in the amount of our proportion of the claim for as long as we have claims against the customer is established simultaneously.

7.8. The customer undertakes not to encumber the goods reserved for complete fulfilment of all of our claims with third party rights nor to transfer the goods to a third party as security. He undertakes to notify us immediately if the goods are seized for third parties or other rights are asserted against them. The customer shall provide us with the information required to maintain our rights and to put any documentation in safe hands. The customer is responsible for all investment costs.

7.9. We undertake to release the securities to which we have a right at the request of the customer if the realisable value of our securities exceeds the claims to be secured by more than 10%; the choice of the securities to be released is at our discretion.

## 8. Shipping risk

8.1. Shipping of the goods from the delivery works or from our warehouse in Mietingen to the customer's location is at the cost and risk of the latter. This also applies if free delivery is agreed.

## 9. Liability for defects

9.1. Claims for defects on the part of the customer presuppose that the latter has properly met his inspection and complaint obligations pursuant to § 377 of the German Commercial Code. Complaints in relation to obvious defects may only be lodged within a limitation period of 5 working days from delivery. Visible transport damage must be reported to the deliverer upon receipt of the goods.

9.2. If there is a defect in the purchased item, the customer is entitled to supplementary performance in the form of rectification of the defect or delivery of a new item without defects at his discretion. If supplementary performance does not take place, the customer reserve the right to withdraw from the contract or reduce the purchase price at his discretion.

9.3. If the customer notifies us of a defect and does not exercise his right to choose the form of supplementary performance in this notification, we are entitled to set the customer an appropriate period to exercise his right to choose and, if this expires without success, to provide supplementary performance in a form of our choice.

9.4. Notifications of and complaints about defects must be provided in writing to become effective.

9.5. We accept liability in accordance with the statutory provisions if the customer asserts compensation claims based on malicious intent or gross negligence, including the intent or gross

negligence of our representatives or vicarious agents. If we are not accused of intentional breach of contract, our liability for compensation is restricted to foreseeable, typical damage.

9.6. We are liable in accordance with the statutory provisions if we culpably breach a material contractual obligation; in this case, too, our liability for compensation is restricted to foreseeable, typical damage. A material contractual obligation exists if the breach of obligation relates to an obligation on the fulfilment of which the customer has relied and may expect to rely.

9.7. If the customer is a merchant, the customer's claims expire within one year of the start of the statutory limitation period. This does not apply if the customer has purchased an item that is used as standard for a structure and that has caused that structure to be defective.

9.8. The limitation period in the case of delivery recourse in accordance with §§ 478, 479 of the German Civil Code remains unaffected; it is five years from delivery of the defective item.

9.9. Liability for culpability in instances of loss of life, physical injury and damage to health remains unaffected; this also applies to mandatory liability under the German Product Liability Act.

9.10. Unless the provisions above stipulate otherwise, liability is excluded.

9.11. Data, information, images, descriptions and dimensions are non-binding and serve only as illustrations. We cannot provide any guarantee as to their accuracy and they do not exempt the customer from carrying out his own tests and investigations.

## 10. Overall liability

10.1. Any liability for compensation other than that provided for in 9 is excluded, irrespective of the legal nature of the claim pursued. This applies in particular to compensation claims for negligence on conclusion of contract, for other breaches of obligation and for tortious claims for damages pursuant to § 823 of the German Civil Code.

10.2. The limitation under 10.1. also applies if the customer demands reimbursement of futile expenditure in place of performance instead of claiming damages.

10.3. Insofar as our liability for compensation is excluded or limited, this also applies in relation to the personal liability for compensation of our officers, employees, collaborators, representatives and vicarious agents.

10.4. In the case of breaches of accessory obligations for which we are not responsible, the right of the customer to withdraw from the contract is excluded. This does not apply to breaches of accessory obligations that consist in the delivery of newly manufactured items that are free of defects.

## 11. Place of performance, place of jurisdiction, choice of law

11.1. The place of performance is D-88487 Mietingen and the exclusive place of jurisdiction is the court with jurisdiction over D-88487 Mietingen, insofar as the customer is a merchant, legal person

under public law or special fund under public law. We are, however, entitled to take action against the customer in the court with jurisdiction over his place of residence.

11.2. In addition, the place of jurisdiction for action against the customer is the court with jurisdiction over 88487 Mietingen if, following conclusion of the contract, the customer changes his place of residence or moves his normal domicile abroad, or if his place of residence or normal domicile is unknown at the time when action is taken. This also applies to action regarding cheques and bills of exchange.

11.3. The law of the Federal Republic of Germany applies exclusively, with the exclusion of the UN Convention on the International Sale of Goods.