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# CUSTOMER SERVICE

## General Terms and Conditions of Sale

(Sale and Delivery)

As at: January 2020

**§ 1 General Provisions**

- (1) The contract shall be subject exclusively to our General Terms and Conditions of Sale; we shall not acknowledge any conflicting terms and conditions of the Buyer or any that deviate from our General Terms and Conditions of Sale, unless we have expressly agreed to their validity in writing. Our General Terms and Conditions of Sale shall even apply if we unreservedly perform our contractual obligations in the knowledge of conflicting terms and conditions of the Buyer or any that deviate from our General Terms and Conditions of Sale.
- (2) Our General Terms and Conditions of Sale shall only apply with respect to an entrepreneur (Sections 310 I, 14 of the German Civil Code [BGB]), a legal entity under public law or a public-law special fund.
- (3) All agreements made between us and the Buyer with regard to an amendment of the contract or for the execution of the present contract must be laid down in writing for evidentiary purposes. This shall also apply to any additions. This written form requirement may only be cancelled in writing in each individual case.
- (4) Our General Terms and Conditions of Sale shall apply to all future business with the Buyer.
- (5) Our registered place of business shall be the exclusive place of jurisdiction; we shall, however, also be entitled to bring an action against the Buyer at its legal domicile.
- (6) Unless stated otherwise in the order confirmation, our registered place of business shall be the place of performance for all deliveries and services provided under the present contract.
- (7) The contract shall be subject to German substantive law to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

**§ 2 Quotation**

- (1) Our quotation shall be non-binding.
- (2) Any advertising brochures issued before the quotation shall be subordinate to the performance specification in our quotation, unless they are expressly described as binding and taking precedence. In the event of contradictions between the performance specification and the aforementioned documents, the performance specification shall take precedence in the quotation.
- (3) If the Buyer's purchase order qualifies as a quotation pursuant to Section 145 BGB, we may accept this within 3 weeks, unless a shorter or longer commitment period is agreed in writing.
- (4) An order shall only be deemed accepted when it is confirmed by us in writing or when we start to execute the order.

**§ 3 Confidentiality**

- (1) We reserve proprietary rights and copyrights to cost estimates, drawings and other documents; they must not be made accessible to third parties. This particularly applies to any written documents described as "confidential"; before they are passed on to third parties, the Buyer must obtain our express consent in writing. The Buyer agrees to maintain confidentiality with regard to any commercial or technical information relating to our company that is not public knowledge and becomes known to it as a result of the business relationship, and to use it exclusively for the purpose of executing the contract. Employees and subcontractors must be bound by a corresponding obligation. We agree to obtain the Buyer's consent before providing third parties with access to any plans marked as confidential by the Buyer.

- (2) The Buyer must obtain our written consent before using our company name or our trademark, which is subject to a property right, when quoting references or in other publications used to present its own company.

#### **§ 4 Prices – Terms of Payment**

- (1) Unless otherwise agreed, our prices shall be ex works from Mayen, including the costs for standard packaging; costs for special packaging must be paid separately. Our prices shall not include the statutory rate of VAT; this shall be listed separately in the invoice at the statutory level on the date the invoice is issued. The prices shall be duty unpaid, including waste sheets, loading and cutting costs, without fees and other public duties.
- (2) Unless otherwise agreed, the payment must be made in full within 14 days of the receipt of the invoice. If the Buyer falls into arrears, Section 288 BGB shall apply; we reserve the right to claim further damages.
- (3) All our receivables shall become immediately due for payment if these terms of payment are not observed or if we become aware of circumstances that are likely to reduce the creditworthiness of the Buyer. In such cases, we may also decide to only provide any outstanding deliveries or services upon payment in advance or to demand appropriate securities and withdraw from the contract after a reasonable grace period, and to demand compensation in lieu of performance if the Buyer is at fault.
- (4) If there are outstanding receivables from deliveries for which a retention of title does not exist or no longer exists, incoming payments must initially be deducted from receivables and only once these have been settled in full shall the incoming payments be deducted from receivables for which a retention of title still exists.

- (5) The Buyer shall only be entitled to rights of set-off if its counterclaims are established by law, undisputed or acknowledged by us. An exception to this shall be any claims to compensation arising from the present contract under warranty law. Furthermore, the Buyer shall only be authorised to exercise a right of retention under the aforementioned conditions if its counterclaim is based on the same contractual relationship.

**§ 5 Delivery Dates and Deadlines**

- (1) Delivery dates and deadlines shall only be binding if this is expressly agreed in each individual case. The delivery deadline shall start on the date we accept the order, but not before the full clarification of all the details required to execute the delivery as well as the execution of the agreed advance payments or the provision of the agreed letters of credit or bank guarantees.
- (2) Unless otherwise agreed, we shall be entitled to make reasonable partial deliveries.
- (3) If we are unable to dispatch the goods through no fault of our own, the delivery date and deadline shall be deemed to have been met if the goods are ready for dispatch and this has been communicated on time.
- (4) The agreed delivery deadline shall be extended by the period by which the Buyer is in default of its obligations under the present or another contract – irrespective of our rights arising from such default and our rights to withdrawal according to the statutory provisions. This shall apply analogously if a delivery date has been agreed.
- (5) If we fail to meet the delivery deadline, the Buyer must set a reasonable grace period and may withdraw from the contract at the end of this grace period; it is not necessary to set a grace period if we seriously and definitively refuse to

execute the delivery or if serious circumstances make it seem unreasonable for the Buyer to set a grace period.

- (6) If we fail to observe binding delivery deadlines or there are other delays, the Buyer shall only have claims to compensation if the damage is caused by wilful intent or gross negligence on our part or if there is loss of life, physical injury or damage to health; in the event of a delay caused by slight negligence, we shall only be liable for the foreseeable damage that is typical for the contract.

## **§ 6 Obstruction to Delivery**

Incidents of force majeure shall entitle us to postpone the delivery or service by the duration of the obstruction and an appropriate start-up period or to withdraw from the contract with respect to the part that has not yet been fulfilled. Strikes, lock-outs and other circumstances for which we are not responsible, but which make the delivery or the execution of the service much more difficult or even impossible (e.g. fire, damage to machinery, defective raw materials, obstruction of transport routes) shall be equivalent to force majeure, irrespective of whether these circumstances occur on our premises or on our suppliers' premises. The Buyer may ask us to issue a statement as to whether we intend to withdraw or to deliver or provide the service within a reasonable period. If we do not issue such a statement, the Buyer may withdraw from the contract.

## **§ 7 Compensation due to Unjustified Non-Acceptance**

- (1) If the Buyer withdraws from the contract without justification or fails to accept the goods within the agreed periods or otherwise within a reasonable period that has been set in the notification regarding the readiness for dispatch, we may withdraw from the contract and demand compensation. In

such cases, the risk of accidental loss or the accidental deterioration of the goods shall be transferred to the Buyer at the time at which the latter falls into default of acceptance.

- (2) The Buyer shall owe 25 % of the net invoice amount as compensation; if we can provide evidence of greater damage, compensation shall be owed for these damages. The Buyer shall be permitted to prove that we have incurred no or less damage.

#### **§ 8 Transfer of Risk**

The risk shall be transferred to the Buyer, at the latest, when the goods are handed over to the carrier or, if they are transported by our own staff, when the goods leave the factory. If we make reference to Incoterms, the applicable clauses shall be those contained in the current version at the time the contract is concluded. Any goods reported as ready for dispatch must be requested immediately; otherwise, we shall be entitled, at our own discretion, to store them at the expense and risk of the Buyer and to invoice them as delivered ex works.

#### **§ 9 Retention of Title**

- (1) We shall retain ownership of the sold goods until all our present and future receivables arising from the delivery and an ongoing business relationship (secured receivables) have been paid in full. If the Buyer behaves in such a way that is contrary to the contract, especially in the Buyer fails to pay on time, we shall be entitled to reclaim the goods. Reclaiming the goods shall not constitute a withdrawal from the contract, unless we have expressly declared this in writing. Our attachment of the goods shall always constitute a withdrawal from the contract. After reclaiming the goods, we shall be

authorised to resell them. The proceeds from any such resale shall be deducted from the liabilities of the Buyer – minus any reasonable costs arising from the sale.

- (2) The Buyer must treat the goods with care. In particular, the Buyer is obliged to adequately insure them at its own expense against damage caused by fire, water and theft, to cover the replacement value.
- (3) The Buyer must immediately inform us of any attachments or other third-party intervention, so that we can bring an action pursuant to Section 771 German Code of Civil Procedure [ZPO]. If the third party is not in a position to reimburse our court fees and out-of-court expenses arising from an action pursuant to Section 771 ZPO, the Buyer shall be liable for our loss.
- (4) The Buyer shall be entitled to resell the goods within its ordinary course of business; however, it hereby assigns to us any claims owed by its customers or third parties as a result of the resale to the amount of the final invoice amount (incl. VAT) agreed with us, irrespective of whether the goods are resold without or after processing. The Buyer shall remain authorised to collect these receivables even after the claims have been assigned, provided it complies with its payment obligations arising from the collected revenue, it is not in default of payment, it has not ceased payments and, in particular, no request has been filed for the initiation of insolvency proceedings. If one of these situations is the case, however, we may ask the Buyer to disclose the assigned receivables and the debtors to us, to provide all the information required to collect the receivables, to hand over the associated documents and to inform the debtors (third parties) that the claims have been assigned. This shall have no bearing on our right to disclose the assignment of claims.
- (5) If the Buyer processes or restructures the goods, this shall always be undertaken for us. The Buyer's expectant right to the goods shall continue for the restructured item. If the goods are processed with other items which do



not belong to us, we shall acquire joint ownership of the new item in accordance with the ratio of the objective value of our goods to the other processed items at the time at which they are processed. In other respects, the same shall apply to the item created as a result of the processing as for the reserved goods.

- (6) If the goods are inseparably combined with other items which do not belong to us, we shall acquire joint ownership of the new item in accordance with the ratio of the objective value of our goods to the other items at the time at which they are combined. This shall not apply if the new item can legally be interpreted as the main item or as an essential part. If the items are combined in such a way that the Buyer's item can be regarded as the main item, it hereby agrees to transfer joint ownership to us on a pro-rata basis. The Buyer shall keep the sole or joint property created in this way safe for us. The same shall apply in the event of mixing.
- (7) We agree to release the securities to which we are entitled at the request of the Buyer insofar as the realisable value of our securities exceeds the receivables to be secured by at least 10 % or the nominal value by at least 50 %; we shall be responsible for the selection of the securities to be released.

## **§ 10 Impossibility**

If our delivery is impossible for reasons for which we are responsible, the Buyer may, without prejudice to its right to withdraw from the contract, only demand compensation amounting to a maximum of 20 % of the net price of the part of the delivery that has become impossible, but at least the damage that is typical for the contract. This restriction shall not apply in the event of wilful intent, gross negligence or loss of life, physical injury or damage to health. A reversal of the burden of proof at the expense of the Buyer shall not be associated with this provision.

**§ 11 Other Claims for Compensation**

- (1) The Buyer shall not have any claims for compensation or the reimbursement of expenses on any legal basis whatsoever, especially any claims arising from the infringement of contractual obligations that are not warranty claims.
- (2) This shall not apply if the liability is based on mandatory standards, in particular on the German Product Liability Act [ProdHaftG], in the event of wilful intent or gross negligence, in the event of loss of life, physical injury or damage to health, or in the event of a violation of essential contractual obligations. Essential contractual obligations are those that are expressly agreed as such. Essential contractual obligations shall also include the delivery of a contractual object that is free from significant defects, as well as obligations to provide advice and protection and to exercise care, which should allow the Buyer to use the delivered item in accordance with the contract. In the event of a violation of essential contractual obligations, the compensation claim shall be limited to the foreseeable damage that is typical for the contract, unless it is a case of wilful intent or gross negligence or there is loss of life, physical injury or damage to health. A reversal of the burden of proof at the expense of the Buyer shall not be associated with this provision.

**§ 12 Condition**

- (1) The required condition of the contractual object and any tolerances (dimensional and delivery quantity tolerances) shall be determined by the technical specifications in each individual case.
- (2) The Buyer must inform us of any subsequent changes to requirements regarding the condition of the contractual object as soon as possible; we shall then submit a quotation for any additional fee. If the Buyer does not accept this and the parties fail to agree on the price, we may withdraw from the

contract and demand a part of the fee corresponding to the work we have performed.

### **§ 13 Warranty**

- (1) The contractually agreed condition of the goods shall be determined exclusively by the performance specification contained in the order confirmation or the contract. We shall only assume a warranty if this has been expressly agreed in writing and the pledge is labelled as a “warranty”.
- (2) The Buyer may only assert its warranty rights, including any rights of recourse due to warranties vis-à-vis its customers, if it has properly complied with its inspection and reporting obligations in accordance with Section 377 of the German Commercial Code [HGB]. Obvious defects must be reported to the Buyer within two days of the receipt of the goods, and latent defects must be reported within one week of their discovery.
- (3) If the goods are faulty, we shall be entitled to provide supplementary performance (at our discretion: removal of the defect or delivery of a faultless item). The Buyer must not undertake work to remedy the defect itself or have this undertaken by third parties without our prior consent; we shall not assume the costs incurred for such work. If we remedy the defect, all the necessary expenses must be borne by us, especially transportation, road, labour and material costs, unless these are increased as a result of the goods being moved to a place other than that to which we delivered the goods or that was named as the destination in the contract.
- (4) If we fail to remedy the defect or refuse to do so, or if we refuse to deliver a faultless item, the Buyer shall be entitled, at its own discretion, to withdraw from the contract or to demand an appropriate reduction of the purchase price.

- (5) Unless stated otherwise below (6), the Buyer shall not have any further claims – irrespective of their legal basis. Therefore, we shall not be liable for damages that have not arisen from the delivered item itself. In particular, we shall not be liable for any loss of profit or other financial losses by the Buyer.
- (6) If the damage is caused by wilful intent or gross negligence, or if the damage relates to life, limb or health, we may be held liable in accordance with the statutory provisions. If we infringe an essential contractual obligation through slight negligence (§ 11 (2)), our liability shall be limited to the damage that is typical for the contract. In other respects, our liability shall be excluded pursuant to (5).
- (7) The warranty period shall be 6 months from delivery. This shall not apply to any deliveries used, as intended, for integration in a building that cause defects in the same. Likewise, the warranty period shall not apply to any compensation claims made by the Buyer arising from the loss of life, physical injury or damage to health or from infringements of obligations by us through wilful intent or gross negligence, which shall lapse in accordance with the statutory provisions.

#### **§ 14 Engagement of Third Parties**

We shall be entitled to engage subcontractors for the partial or full provision of services that are necessary in connection with the production of the contractual object.

#### **§ 15 Severability Clause**

If a provision contained in this contract is or becomes invalid, this shall not affect the validity of the remaining provisions. If a provision contained in an

individual contract is invalid, the parties shall endeavour to replace the invalid provision with a valid provision whose purpose best reflects that of the omitted provision. The same shall apply if the contract contains a loophole.

**Last updated: January 2020**