

General Business Terms & Conditions

1. General clauses, scope of contract, written form

1.1 Our General Business Terms & Conditions only apply to transaction with companies according to article 14, paragraph 1 German Civil Code (BGB).

1.2 Our services and deliveries are made exclusively on the basis of these General Business Terms & Conditions. Business terms and conditions of the Purchaser that contradict our General Business Terms & Conditions shall not apply, unless we confirm in writing that such terms and conditions are applicable. The following General Business Terms & Conditions shall also apply if we have knowledge of conflicting or deviating terms and conditions of the Purchaser and perform the delivery to the Purchaser without reservation.

1.3 For repeat business, these General Business Terms & Conditions as valid at the time of conclusion of the contract shall form an integral part of the contract, even if this is not specifically mentioned.

1.4 Any verbal arrangements or concessions, including verbal assurances and amendments to the contract, shall only be valid following our written confirmation.

2. Conclusion of contract

2.1 Our offers are non-binding, unless they include a specific period of validity.

2.2 Orders only become binding upon receipt of confirmation on our part, or upon fulfilment. The Purchaser is bound to its order until receipt of our order confirmation or until fulfilment, but for no longer than one month.

3. Offer documentation, approvals, general information

3.1 We reserve, with no limitations whatsoever, ownership rights and copyrights of all offers, quotations, calculations, drawings, samples and other material such as tools, specimens, illustrations, pictures, descriptions, models, documents, files, etc. made available by us to the Purchaser. This also applies accordingly to material owned by third parties and made available by us to the Purchaser. These documents and objects may only be disclosed to third parties with our explicit consent and must be returned to us on request when they are no longer needed by the Purchaser in connection with the business transaction or if negotiations have not resulted in a valid contract.

3.2 Specifications regarding weight and dimensions, and information submitted in the form of drawings, diagrams, etc. shall only be binding, if the relevant documents are specifically identified as parts of the contract or if they are referred to in the contract.

3.3 The Purchaser shall be responsible for the procurement of all approvals and permits, including export and import licenses, required for the shipment and use of the product. If we are requested to assist

the Purchaser in these matters, we shall be entitled to charge reasonable costs.

3.4 All information regarding the suitability, design, construction and application of our products and technical advice regarding our products is given to the best of our knowledge. The Purchaser is however obliged to perform its own tests and assessments.

4. Product specifications, material defects

4.1 Our product descriptions and specifications do not constitute guarantees of quality or durability within the meaning of articles 443, 444, 639 BGB, unless such we have given such a guarantee in writing pursuant to articles 443, 444, 639 BGB.

4.2 With regard to the quality and scope of the delivery or service, the product description as agreed upon conclusion of the contract is binding. Public statements made by us for marketing and other purposes regarding the characteristics and quality of our products shall not be binding, unless agreed specifically in writing with the Purchaser.

4.3 No warranty on defects in materials and workmanship shall be granted for previously used products that are ordered as such. This does not apply to claims in relation to guarantees of quality, fraudulently concealed defects and claims pursuant to clause 13.1 a) to g).

4.4 In the event of defects in goods or services where these defects existed prior to the transfer of risk, we shall provide remedy by replacement or reworking as deemed most expedient to us. Parts that have been replaced in the course of reworking or repair shall become our property and must be handed over to us by the Purchaser on request.

4.5 The place of performance for reworking or replacement is our factory.

4.6 If the product has been moved to a location other than the place of delivery, any additional costs arising in connection with reworking or replacement shall be payable by the Purchaser.

4.7 Claims for defects shall only be accepted if they concern significant deviations from the agreed quality, specifications, serviceability or performance of the product.

4.8 For the purpose of remedy by reworking or replacement, the Purchaser undertakes to engage with us to make suitable arrangements as regards access to the product for the time required for reworking or replacement. If no such arrangements are made, we shall reject any liability for consequential damage.

4.9 Within the framework of the statutory provisions, the Purchaser has the right to withdraw from the contract if, taking into account the statutory exceptions, we allow a previously set reasonable deadline for reworking or replacement due to a material defect to elapse fruitlessly. For minor defects, the Purchaser shall only be entitled to demand a reduction of the agreed price.

4.10 Our liability for damages or compensation for expenses due to defects in material shall be limited to the provision in clause 13.

4.11 Notwithstanding the above clauses 4.1 to 4.10, we shall be liable for damage according to the statutory regulations if we have made guarantees as regards a relevant product property or if a defect has been fraudulently concealed. This also applies in cases where the Purchaser has sold the product to a third party and where this third party is taking recourse against the Purchaser for such damage (article 478 BGB).

4.12 If, following a complaint and/or return of the goods, our examinations and tests reveal that the products or services were not defective, and the complaint is therefore not valid, we shall be entitled to demand adequate compensation for shipping costs and expenses incurred for the examination and testing of the goods.

4.13 We shall reject any liability for damages arising from the following, unless we are responsible for the damage: Non-compliance with instructions and information in our operating manual, improper or excessive use of the product, incorrect assembly, installation or commissioning by the Purchaser or a third party, non-compliance with the operating and ambient conditions specified in the technical documentation, normal wear and tear, incorrect or negligent handling of the product, incorrect or insufficient maintenance, incorrect operation, installation on unsuitable ground, damage caused by electrochemical or electrical influences.

4.14 If the Purchaser or a third party carries out improper repairs, we shall not be liable for any resulting damages. This also applies to modifications to or interference with the delivery item carried out without our prior consent.

4.15 Within the scope of the Purchaser's recourse claims against us, we shall not be liable for agreements between the Purchaser and its customer that go beyond the statutory warranty claims. This applies in particular to extended warranty periods, lump-sum damages, contractual penalties or reference market procedures.

4.16 Information provided free of charge in the context of the sale such as technical advice, plans, drafts, calculations, etc. is not covered by liability.

4.17 A notice of defects made by the Purchaser shall not be accepted in cases where our request to examine the allegedly defective product or service is not granted by the Purchaser.

4.18 Reworking or replacement by us following a complaint shall not constitute an acknowledgement of liability.

4.19 Claims by the Purchaser for defects shall only be accepted if the Purchaser has conformed with its obligations according to article 377 German Commercial Code (HGB) as regards examination and proper complaint procedures. This also applies to claims made under warranty.

4.20 Our obligations outlined in clause 4 for defects in material and workmanship are conclusive, save the provisions in clause 13.

4.21 Clauses 4.1 to 4.20 shall apply accordingly, to the exclusion of further claims of the Purchaser, if the delivery item cannot be used by the Purchaser

in accordance with the contract due to our fault, as a result of omitted or faulty execution of proposals or consultations made before or after conclusion of the contract, or due to a breach of other ancillary obligations, in particular instructions for operation and maintenance of the delivery item.

5. Defects in title

5.1 Unless agreed otherwise, our obligation to ensure that no intellectual properties or rights of third parties (hereafter referred to as intellectual property rights) have been infringed within the Federal Republic of Germany. Should the delivery item or parts thereof at the time of conclusion of the contract infringe on an intellectual property right of a third party granted and published in Germany, resulting in justified claims for damage against the Purchaser, we shall acquire the required utilisation rights on behalf of the Purchaser or modify the product in such a way that there is no longer any infringement of such property rights. If this cannot be achieved within a reasonable period of time or at reasonable costs, the Purchaser shall be entitled to withdraw from the contract or demand a price reduction. Under the above circumstances, we shall also be entitled to withdraw from the contract.

5.2 If third-party property rights are infringed by drawings or information provided by the Purchaser or if the Purchaser is responsible for the infringement of property rights for other reasons, claims by the Purchaser are excluded and the Purchaser must indemnify us in the event of a claims by a third party.

5.3 Our obligation of compensation for damages is limited to the provisions in clause 13.

5.4 We shall only be bound to our above obligations with regard to defects in title

- if the Purchaser notifies us without delay of any action taken by a third party,
- if the Purchaser supports us in our defence against such a claims and assists us to a reasonable extent in the completion of the modifications as outlined above,
- if the Purchaser does not restrict our means of defence, including the option of out-of-court settlement,
- if the defect in title is not caused by an unauthorised modification to the delivery item or by the use of the item for a purpose not foreseen by us,
- if the defect in title is not the result of a specific instruction of the Purchaser.

5.5 If the Purchaser refrains from using the delivery item, for instance to minimise the damage or for another important reason, it is obliged to notify the third party claiming infringement of intellectual property rights that this does not constitute an acknowledgement of responsibility for any infringement.

5.6 In the event of a defect in title, clauses 4.15 and 4.19 apply accordingly.

5.7 Our obligations outlined in clause 5 as regards defects in title are conclusive, save the provisions in clause 13.

6. Pricing, payment, termination of contract, offsetting, retention of title

6.1 Unless agreed otherwise, our prices are Ex Works Walter-Eckold-Strasse 1, D - 37444 St. Andreasberg, Germany (INCOTERMS 2010), subject to VAT at the applicable rate. Payment must be made in full after receipt of the goods and the invoice and within the agreed payment period. If there is no agreed payment period, payments are due within 30 days from receipt of the invoice.

6.2 For additional work or services and for modifications requested by the Purchaser and/or made in its interest by us, we shall be entitled to invoice the Purchaser based on the agreed unit prices and hourly rates for labour, or minimum the usual pay rates pursuant to article 632, paragraph 2 BGB.

6.3 The prices quoted in the offer apply only if the scope of the order corresponds to that of the offer.

6.4 For partial deliveries, we shall be entitled to issue separate invoices for each partial delivery.

6.5 All payments must be made directly to one of our bank accounts. Our invoices are payable in full, inclusive of VAT. Charges, fees and other costs that might occur in connection with the explicitly agreed acceptance of bills of exchange or cheques shall be payable by the Purchaser. Payment is deemed made on the date on which we have full access to the respective funds.

6.6 If the Purchaser terminates the contract pursuant to article 648 BGB, we shall be entitled to compensation according to the terms laid down in 648 BGB. Alternatively, we shall be entitled to demand compensation for expenses and loss of earnings by charging 10 per cent of the agreed net order value. This compensation shall not be payable if the Purchaser provides proof that we are not entitled to compensation pursuant to article 648 BGB or that our entitlement to compensation according to article 648 BGB is substantially lower than the demanded compensation. This shall not affect our rights pursuant to article 648 BGB to claim further compensation.

6.7 The Purchaser shall only be entitled to set off its liabilities against receivables if these are not contested by us or if the transaction is part of a synallagmatic business relationship. The Purchaser shall not be entitled to set off payments against counter-claims, unless these claims are undisputed or recognised by declaratory judgement.

7. Use of software

7.1 If our delivery includes the provision of software products, the Purchaser is only granted a non-exclusive right to use the software and the accompanying documentation. The software is made available for use in the designated product. The Purchaser shall not be entitled to use the software on more than one system.

7.2 The Purchaser shall be entitled to copy, reproduce, reprogram or localise the software as is permitted by law (articles 69 a. ff. German Copyright Law (UrhG)). This also applies to the conversion of object code to

source code. The Purchaser shall not remove or modify the copyright notes or any other references to the producer of the software, unless we have specifically agreed to this in advance and in writing. The Purchaser shall handle the software and the accompanying documentation as confidential.

7.3 We shall not be obliged to disclose the source code of the software product.

7.4 All other intellectual property rights in the software and the documentation remain the property of the respective owner, i.e. us or the software provider. The Purchaser is not entitled to issue sublicenses.

7.5 We retain ownership of all inventions, designs and processes made or developed by us. Apart from the provisions of this clause 7, no industrial or non-industrial property rights are granted.

8. Retention of title

8.1 The delivery item shall remain our property until all outstanding payments arising from the business transaction, including future liabilities arising from contracts entered into at a later stage, have been settled in full. This applies also if payments have been made against specific invoices. For Purchasers who have an account with us, we shall retain title in the goods as a security for any outstanding amounts accepted and payable by the Purchaser.

8.2 The Purchaser is obliged to handle all goods in which we retain a title with due care, provided that it has access to them. The Purchaser must further perform all required and customary inspection and maintenance tasks at its own expense. The Purchaser must insure the goods at replacement value against fire, water damage and theft and assign compensation in the event of a claim to us. We herewith accept this transfer of benefit. The Purchaser shall not be entitled to pawn or otherwise use the supplied goods as sureties before ownership has been passed to him.

8.3 The Purchaser must notify us without delay of any damage or loss of the goods in which we retain a title. This also applies in cases where the goods have been seized or attached, whereby the Purchaser must furnish us with all documents that we require to enforce our title in the goods. All costs and charges in connection with the enforcement of our title in the goods and their return shall be payable by the Purchaser. The Purchaser must notify us without delay of any change of ownership or address of its business.

8.4 In the event of breach of contract by the Purchaser, in particular delay of payment of secured liabilities, and if payment is not received after granting a reasonable grace period, we shall be entitled to demand the return of the goods in which we retain title and/or withdraw from the contract. The statutory provisions on the dispensability of grace periods remain unaffected. A demand for return of the goods subject to retention of title or the pawning of these goods by us shall not constitute a withdrawal from the contract, unless confirmed otherwise by us in writing.

8.5 An application for insolvency proceedings against the Purchaser shall entitle us to withdraw from the contract and to demand the immediate surrender of the delivery items.

8.6 The Purchaser shall be entitled to sell the goods subject to retention of title in the course of its normal business activities. The Purchaser herewith assigns to us all receivables, to our final invoice amount (including VAT), to which it is entitled from the resale of the goods or any other utilisation of the goods by third parties, irrespective of whether the goods have been resold unprocessed or after processing. We herewith accept this transfer of benefit. The Purchaser shall be entitled to collect amounts outstanding from the resale of the goods after assignment to us. We reserve the right to collect such outstanding payments ourselves. We however undertake not to do this as long as the Purchaser meets its obligations of payment and is not in default. In the event of default, bankruptcy, initiation of voluntary insolvency proceedings, or if we have good reason to suspect excessive indebtedness or imminent insolvency on the part of the Purchaser, we shall be entitled to revoke the resale and collection authorisation granted to the Purchaser. In such a case, we shall be entitled to demand that the Purchaser discloses the assigned receivables and the details of the relevant debtors as well as any other information required for the purpose of collection, and that it hands over the operating documents and notifies its customers (debtors) of the assignment.

8.7 If the goods subject to retention of title are resold by the Purchaser together with other goods, the transfer of the demand shall only apply to the amount of the invoice value of the goods that are subject to retention of title.

8.8 If we are a co-owner of the resold goods subject to retention of title, the transfer of the demand shall amount to the portion of the total value that corresponds to our share in the goods.

8.9 The processing or modification by the Purchaser of the goods subject to retention of title shall always be performed on our behalf and without any obligation to us, and the resulting products shall become our property. If the goods subject to retention of title are processed together with goods that are not purchased from us, we shall remain the owner of the share in the value of the new products (final invoiced amount including VAT) that represents the value of the goods supplied by us at the time of processing. If the Purchaser, through bonding, mixing or otherwise, acquires full ownership of the goods subject to retention of title, it shall herewith transfer partial co-ownership to us, based on our share in the value of the new products (final invoice amount including VAT) that represents the value of the goods supplied by us at the time of processing. In all above cases, the goods in which we have full or partial ownership shall be stored for us by the Purchaser free of charge.

8.10 Where a delivery item has become an inseparable part of a building structure or is permanently fixed to the ground, this shall only be done on a temporary basis.

8.11 If the goods subject to retention of title have been permanently installed in the property of a third party, the Purchaser shall assign to us the receivables from such goods. We herewith accept this transfer of benefit.

8.12 For as long as we have an unsettled claim arising from a business transaction with the Purchaser, the Purchaser shall inform us on request about the actual location of the goods subject to retention of title and their current ownership.

8.13 If the marketable value of the securities exceeds the outstanding claims by more than 10 per cent, we undertake to release the securities to which we are entitled at the request of the Purchaser. In this case, we shall choose the securities to be released.

9. Delivery terms

9.1 Delivery terms and periods are only binding if they have been specifically agreed between the parties or confirmed by us. The delivery period begins with the date of the order confirmation but not before the Purchaser has submitted all required documentation, authorisations and permits, has clarified all issues with regard to delivery and has paid the agreed deposit, if applicable.

9.2 The delivery terms can only be met by us if the Purchaser performs all its above obligations in due time.

9.3 Our deliveries are subject to correct and timely supply by our subcontractors, unless this was not possible due to our fault. Should we become aware of possible delays, we shall notify the Purchaser immediately.

9.4 Delivery periods shall be extended appropriately if the Purchaser has not met its obligations, as well as in the event of force majeure or other unforeseeable obstacles beyond our control, including labour disputes, delays in obtaining government permits, energy supply, transport and traffic disruptions, insofar as such events have a significant influence on our ability to fulfil our order, or affect the operational capability of our subcontractors. This also applies to circumstances that occur during the delay period.

9.5 The delivery period shall also be extended if we are requested or ordered by the Purchaser to perform additional work or to modify the agreed design.

9.6 We shall be entitled to make partial deliveries, provided that these are not unreasonable for the Purchaser.

9.7 The delivery terms shall be deemed fulfilled if the notification that the delivery item is ready for dispatch has been sent to the Purchaser in due time, or if the delivery item has left our works within the stipulated delivery period. For goods that are subject to acceptance procedures, the relevant date is the date of the completion notification or the notification that the goods are ready for acceptance.

9.8 Even if a reminder is sufficient, or not required by law, we shall only be in default after expiry of a reasonable grace period set in writing, unless the setting of a grace period would be unreasonable for the Purchaser. In the event that our delivery is delayed, the Purchaser shall

only be entitled to withdraw from the contract if we are responsible for the delay. The above provision shall not reverse the burden of proof to the disadvantage of the Purchaser. If the Purchaser wishes to avail of its right to withdraw from the contract, it must notify us within a reasonable period of time whether it wishes to cancel the order or to receive the goods/services.

9.9 Our liability in the event of delayed delivery/performance of service shall be limited according to the provisions in clause 13.

10. Export licences

If the goods or parts thereof are subject to statutory export licences or similar restrictions, including export restrictions by the US government, the Purchaser is obliged to notify us without delay and in writing of this fact and the extent of these restrictions.

11. Transfer of risk, acceptance procedure, delayed acceptance

11.1 Unless agreed otherwise, the goods are shipped at the risk and at the expense of the Purchaser. The risk of loss or damage is transferred to the Purchaser upon handing over the goods to the person responsible for transport, even if the transport vehicle is provided by us. This also applies to deliveries where we pay the costs, such as free shipping to the customer and deliveries free domicile, and to deliveries that require further work on our part on site, for example in connection with installation or commissioning.

11.2 For contracts for services, the risk is transferred to the Purchaser upon acceptance. The acceptance procedure must be completed on the agreed acceptance date, or following our notification of readiness for acceptance. The Purchaser shall not be entitled to refuse acceptance on the grounds of minor defects.

11.3 If dispatch or acceptance is delayed or does not take place as a result of circumstances for which we are not responsible, the risk shall pass to the Purchaser at the time of notification of readiness for dispatch or acceptance.

11.4 If the Purchaser fails to accept the goods in due course, or fails to cooperate in the acceptance process, or if our delivery is delayed for other reasons for which the Purchaser is responsible, we shall be entitled to compensation for damages and additional costs (e.g. storage costs) arising from the delay.

12. Impossibility or incapability of performance

12.1 If we are unable to perform our duties under the contract prior to the transfer of risk, the Purchaser shall be entitled to withdraw from the contract with immediate effect. This also applies in cases where, at the time of ordering, we are unable to fulfil a part of the order and the Purchaser has good reason to reject partial delivery or performance. If the Purchaser does not withdraw

from the contract at this stage, it shall be liable for the share of the agreed price that corresponds to the partial delivery or performance. Our liability in the event of impossibility or incapacity of performance shall be limited according to the provisions in clause 13.

12.2 If impossibility or incapacity of performance occurs during the acceptance delay or if the Purchaser is solely or primarily responsible for these circumstances, it shall remain liable for consideration.

13. Liability

13.1 In the event of breach of contract on our part, including delayed and/or defective delivery/service, we shall only be liable for damages (including damage caused to property other than the delivery item) – subject to other contractual or statutory provisions – in the event of

- a) malicious intent,
- b) gross negligence,
- d) non-accidental damage to health, including serious or fatal injury,
- e) fraudulent concealment of a defect,
- f) peremptory liability under the German Product Liability Act,
- g) slight negligence in conjunction with a breach of an essential contractual obligation. In the case of the latter, claims shall be limited to reasonably foreseeable damage typical of this kind of contract. An essential contractual obligation is a duty under the contract that is essential for the achievement of the purpose of the contract. Such obligations include our duties arising directly from the contract, as well as other duties that are material for the proper fulfilment of the contract and where the Purchaser can reasonably expect to be able to rely upon. Further claims for damages, including for consequential damages, are excluded.

13.2 Our liability in connection with the loss of data shall be limited to the costs that would have arisen for data recovery if the Purchaser had made proper data backups.

13.3 The above clauses regarding limitation and exemption of liability shall also apply to the personal liability of our employees, agents and representatives.

14. Period of limitation

14.1 All claims of the Purchaser – on whatever grounds – must be made within 12 months. This does not apply to claims in relation to guarantees of quality, fraudulently concealed defects and claims pursuant to clause 13.1 a) to g), which are subject to statutory regulations. The statutory regulations also apply to defects in buildings and in delivery items that, in line with their customary utilization, have been used in building construction and have caused a defect in the building, and to recourse on the part of the Purchaser in connection with the purchase of consumer goods (article 478 BGB).

14.2 The start of the period of statutory limitation is determined by law.

15. Compliance

The Purchaser shall be prohibited from making use of child labour or forced labour, either directly or indirectly. He shall take suitable measures to prevent any form of discrimination against certain groups in society within its company and with regard to the selection of subcontractors and/or suppliers. The Purchaser is further obliged to provide a safe working environment for its staff, to minimise the impact of its activities on the environment and to refrain from any corrupt acts.

Where we act as a contractor, we shall also adhere to these principles.

16. Confidentiality, transfer of benefit, place of performance, jurisdiction, applicable law, severability

16.1 The Purchaser undertakes to handle all confidential commercial and technical information disclosed to it in connection with the contract in strictest confidence. The Purchaser undertakes to handle all data made available to him for the purpose of this contract with due care, not to use it for any other purpose than the intended and not to disclose it to third parties. Commercial and technical documents prepared by us may not be made accessible to third parties without our express authorisation, and in particular not for the purpose of obtaining other offers. To enforce confidentiality, it is the duty of the Purchaser to enter into binding confidentiality agreements with its employees and/or agents.

16.2 The transfer of any benefits of the Purchaser under a contract, including the transfer of claims for compensation, requires our explicit consent.

16.3 The place of performance of all contractual obligations is the place of our registered offices.

16.4 If the Purchaser is a registered trader, a legal entity under public law, or a special asset governed by public law, any disputes arising from a contract shall be settled before a competent court at the place of our registered offices. We reserve the right to bring action against the Purchaser before a court at the place of general jurisdiction of the Purchaser.

16.5 The contract is governed by German Law. The United Nations Convention on Contracts for the International Sale of Goods (UN Sales Convention) of 11/04/1980 is not applicable.

16.6 The decision or declaration that one or more of the clauses of the contract with the Purchaser or of these General Business Terms & Conditions are null and void shall not affect the remaining clauses. An invalid clause shall be replaced by a statutory regulation that best reflects the intent and purpose of the initial clause.

16.7 The language of the contract is German. If the contracting parties agree to use another language, the German version shall remain binding in all cases. If written communication or written form is required in these General Business Terms & Conditions, text form shall suffice to fulfil this requirement.