

# General Terms and Conditions of Sale and Delivery

Business sales in the European Union governed by German law

## 1 General provisions and scope

- (1) These General Terms and Conditions of Sale and Delivery apply to our sales and deliveries of movable goods, including goods to be manufactured or produced. They apply exclusively to customers acting in the exercise of their trade, business or profession within the meaning of section 14 of the German Civil Code (BGB), legal entities governed by public law and special funds governed by public law. They do not apply to sales to consumers.
- (2) Our terms apply exclusively. Any differing, conflicting or additional terms of the customer become part of the contract only to the extent that we expressly agree to them. This also applies if we deliver without reservation while aware of such terms or refer to documents of the customer.
- (3) Individually agreed terms take precedence over these terms. They should be recorded in text form for documentation purposes; their validity and precedence do not depend on that form. Text form means a readable declaration identifying its author on a durable medium within the meaning of section 126b BGB, including an email meeting those requirements. The specific formal requirements for jurisdiction agreements in clause 11 remain applicable.
- (4) In an ongoing business relationship, the version of these terms incorporated into the contract also applies to subsequent transactions of the same kind without a renewed reference to them. An amended version becomes part of a contract only if validly incorporated.
- (5) Separate design, consultancy, installation, commissioning, maintenance or repair services are owed only if separately agreed. These terms do not replace any additional contractual and technical provisions required for such services.

## 2 Quotations and formation of contracts

- (1) Our quotations are non-binding unless expressly designated as binding. An order placed by the customer constitutes a binding offer to enter into a contract. We may accept it within two weeks of receipt by an order confirmation in text form or by dispatching the goods.
- (2) The nature and scope of our obligations are determined by the agreement, in particular the order confirmation and the technical documents incorporated into it. Specifications of dimensions, weights and performance are subject only to customary commercial tolerances that do not impair agreed characteristics, safety or the use contemplated by the contract.
- (3) We reserve existing ownership and intellectual property rights in quotations, calculations, drawings, illustrations and other documents supplied by us. The customer may use them only for the agreed purpose and may not disclose them to third parties without our consent. Necessary disclosure to employees and advisers bound by confidentiality is permitted. Mandatory legal disclosure obligations remain unaffected.
- (4) Quotations are normally free of charge. Chargeable project planning or engineering work required to prepare a quotation will be carried out only under a separate order. The remuneration and basis of calculation, including hourly rates or a cost framework, must be agreed before work starts.

- (5) Changes or additions to an existing order require agreement. Any resulting adjustment to price and delivery time must be agreed before implementation. Statutory or individually agreed rights to request changes remain unaffected.

### 3 Prices and payment

- (1) Unless otherwise agreed, our prices cover making the goods available at the works or warehouse in Hamburg specified in the order. Packaging, shipping, freight, separately agreed transport insurance and any applicable export handling charges are charged in addition unless included in the agreed price. The nature and basis of calculation of such additional charges will be stated in the quotation or, at the latest, when the contract is concluded. VAT legally due will be added at the applicable rate. All amounts stated in these terms are in euros.
- (2) The standard minimum order value is EUR 100.00 net per order. If we accept an order with a lower net goods value, an additional small-order surcharge of EUR 100.00 net applies per order. Net goods value excludes VAT, shipping costs and other surcharges.
- (3) Unless otherwise agreed, the price is payable without deduction within 30 calendar days of receipt of the invoice, but not before delivery. Agreed advance or instalment payments remain unaffected. Payment is timely only when received in our bank account. A cash discount is available only if separately agreed.
- (4) After expiry of the payment period, default arises subject to the statutory requirements. In the event of default, we claim statutory interest applicable to payment claims in transactions without consumer involvement, currently nine percentage points above the applicable German statutory base rate, and the statutory fixed compensation, currently EUR 40.00. We reserve the right to recover further loss caused by default, subject to statutory rules preventing double recovery.
- (5) If, after conclusion of the contract, it becomes apparent that our payment claim is jeopardised by the customer's inability to pay, we may withhold our advance performance under section 321 BGB. We may set a reasonable period within which the customer must, at its choice, either pay concurrently with our performance or provide security. If that period expires without compliance, we have the statutory rights to withdraw from the contract. This does not automatically accelerate other debts subject to agreed payment periods.
- (6) For deliveries with a contractually agreed delivery date more than four months after conclusion of the contract, the following cost adjustment applies unless a fixed price has been agreed. If directly attributable material and procurement costs, manufacturing wages including statutory ancillary labour costs, or energy costs change after conclusion of the contract, we may adjust the net price solely by the actual additional costs attributable to the delivery concerned. Reductions in those cost categories must be offset using the same criteria and timing. An overall cost reduction requires a corresponding price reduction. An increase in our profit margin or the mere passing on of changes to our general selling prices is excluded.
- (7) The comparison is between the costs underlying the contract price when the contract was concluded and the costs at the agreed delivery date. Only quantities and working hours in the original calculation are included; additional costs caused by our own delay or inefficiency are excluded. We will notify the customer in text form at least four weeks before delivery, explaining the changed cost categories, their original shares of the net price and the net adjustment. On request, we will provide suitable supporting evidence, with redactions where necessary that still permit verification of the calculation. If an increase exceeds five per cent of the original net price of the delivery concerned, the customer may withdraw from that delivery without charge by notice in text form within two weeks of receiving the adjustment notice. Our notice will draw attention to that right and the deadline.

#### 4 Set off and rights to withhold performance

- (1) The customer may set off only counterclaims that are undisputed or established by a final judgment. This restriction does not apply to counterclaims arising from reciprocal obligations under the same contract, in particular claims relating to defective or unperformed counter-performance.
- (2) The customer may exercise a right of retention to the extent that it arises from the same contractual relationship. Statutory rights to withhold performance because our performance is absent or defective, in particular under section 320 BGB, remain unaffected.

#### 5 Delivery periods and impediments to performance

- (1) Delivery periods and dates are individually agreed or stated by us when accepting the order. Compliance requires the customer to provide the technical information, documents, approvals and agreed advance payments for which it is responsible in good time. If the customer delays such cooperation, the delivery period is extended by the resulting delay plus a reasonable restart period. This does not apply to the extent that we are responsible for the delay.
- (2) Partial deliveries are permitted if the customer can use them for the contractual purpose, delivery of the remaining goods is assured and no substantial additional burden arises for the customer. We bear additional shipping costs resulting from partial deliveries initiated by us unless otherwise agreed.
- (3) Force majeure and other events that were unforeseeable when the contract was concluded, are beyond our control and cannot be avoided by reasonable measures extend the delivery period by the duration of their proven effects plus a reasonable restart period. Such events may include natural disasters, war, lawful industrial action or governmental measures. General cost increases or ordinary procurement difficulties do not suffice. We will promptly inform the customer of the impediment and its expected duration and take reasonable steps to limit its effects.
- (4) If an impediment under paragraph 3 continues for more than three months, or it becomes apparent earlier that performance will not be possible within a reasonable time, either party may withdraw from the affected, unperformed part of the contract. Earlier statutory rights to withdraw, particularly where further waiting is unreasonable, remain unaffected. Payments attributable to the cancelled part will be refunded without undue delay.
- (5) Our obligation to deliver is subject to correct and timely supply by our own suppliers only where, when concluding the customer contract, we had concluded a corresponding procurement contract suitable in terms of type, quantity and delivery time, and the supplier fails to supply correctly or on time without fault on our part. We will promptly notify the customer. For a temporary shortfall, we will communicate a reasonable revised delivery date; if the goods are permanently unavailable, we may withdraw from the affected part and will refund payments attributable to it without undue delay. The customer's statutory rights remain unaffected.
- (6) If the customer is in default of acceptance, we may recover necessary additional expenses under the statutory rules. If the customer culpably breaches its duties to cooperate, we may claim the resulting loss. No flat-rate storage charge applies without separate agreement. The passing of risk during default of acceptance is governed by statute.
- (7) The requirements for delay in delivery and the customer's rights to withdraw are governed by statute. Claims for damages arising from delayed or failed performance are governed exclusively by clause 8.

## 6 Shipment and passing of risk

- (1) Unless otherwise agreed, the goods are made available at the works or warehouse in Hamburg specified in the order. At the customer's request, we will ship them to another location. Where no shipping instructions have been agreed, we will select the carrier, route and suitable packaging with due care.
- (2) For collection, the risk of accidental loss or deterioration passes on handover to the customer. For a sale involving shipment at the customer's request, that risk passes when the goods are handed over to the forwarding agent, carrier or other person or organisation appointed to carry out shipment. Our payment of shipping costs does not alter this rule. Individually agreed delivery terms take precedence.
- (3) We arrange transport insurance only at the customer's express request and expense, unless already included in the agreed price. Our liability for culpable breaches relating to packaging, selection of the carrier or shipment remains subject to clause 8.

## 7 Agreed quality and remedies for defects

- (1) The agreed characteristics and intended contractual use are determined by the parties' agreement, including incorporated technical specifications. The statutory requirements of section 434 BGB remain applicable unless a specific deviation has been validly agreed. A guarantee of quality or durability requires a declaration recognisable as a guarantee; individually agreed guarantees remain unaffected.
- (2) Where the sale is a commercial transaction for both parties within the meaning of German commercial law, the statutory inspection and notification duties under section 377 of the German Commercial Code (HGB) apply. Apparent defects must be notified without undue delay following an inspection practicable in the ordinary course of business; hidden defects must be notified without undue delay after discovery. For documentation, we request notice in text form and a description as precise as reasonably possible; this does not restrict any legally sufficient form of notice. We cannot rely on a failure to inspect or notify where we fraudulently concealed the defect.
- (3) For a material defect, we will, at our choice, provide subsequent performance by remedying the defect or supplying goods free from defects. Statutory rights to refuse subsequent performance remain unaffected. We will not choose a remedy that is unreasonable for the customer in the particular circumstances. Where section 478 BGB prevents a departure from the statutory right of choice, that right remains with the customer.
- (4) The customer must allow us the reasonable time and opportunity required for examination and subsequent performance and make the affected goods available. On replacement, the replaced goods must be returned in accordance with statute; we will take them back at our expense. Necessary removal and reinstallation costs and transport, travel, labour and material costs are borne by us in accordance with section 439 BGB. Onward delivery or installation outside the original delivery location in accordance with the goods' intended use does not, by itself, exclude statutory cost reimbursement rights.
- (5) We must normally be given an opportunity to provide subsequent performance before the customer remedies a defect itself. Measures permitted by law in urgent cases, particularly to prevent disproportionately large loss, and other statutory claims remain unaffected. The customer must inform us beforehand if possible, otherwise without undue delay afterwards.
- (6) For an unjustified request to remedy a defect, we may recover necessary inspection and transport costs only if the customer knew or negligently failed to recognise that no defect for which we are responsible existed. A failure to reproduce or establish a fault does not, by itself, create a claim for costs.
- (7) If subsequent performance fails, is lawfully refused or a reasonable period required by law expires without success, the customer has the statutory rights to withdraw from the contract or reduce the price. Statutory cases in which no further period is required remain unaffected. An insignificant defect

does not entitle the customer to withdraw. Damages and reimbursement of wasted expenditure are governed by clause 8.

- (8) Claims for defects in new and used goods become time-barred twelve months after delivery. If acceptance of the relevant performance is exceptionally required by law or validly agreed, the period starts on acceptance. This shortened period does not apply in the cases specified in paragraph 9.
- (9) Statutory limitation rules apply to claims under section 438(1), nos. 1 and 2 BGB, any applicable claims under section 634a(1), no. 2 BGB, fraudulent concealment, guarantees in accordance with their terms, and statutory supplier recourse rights under sections 445a, 445b and 478 BGB. The shortened period also does not apply to damages or reimbursement claims falling within clause 8(1). Other claims for damages or reimbursement of wasted expenditure arising from a defect are subject to the twelve-month period; any shorter statutory period remains applicable. Statutory rules concerning commencement, suspension, postponement of expiry and recommencement of limitation remain unaffected.
- (10) Goods sold as samples, demonstration goods or used goods are not subject to a blanket exclusion of all defect remedies. Described signs of use, known deviations or limitations of suitability form part of the contract only to the extent specifically agreed. Normal wear and impairments caused only after the passing of risk by improper use, installation, alteration or maintenance do not give rise to liability for defects. Our responsibility for our own breaches, particularly defective instructions, remains unaffected.
- (11) Statutory supplier recourse rights remain unaffected. Without separate agreement, we assume no additional responsibility for voluntary guarantees or goodwill concessions granted by the customer to its own customers beyond the requirements of law.

## 8 Liability and damages

- (1) We are liable in accordance with the applicable statutory provisions for intent and gross negligence, culpably caused injury to life, body or health, and fraudulent concealment of defects. Liability under any guarantee is governed by the terms of that guarantee. Liability under the German Product Liability Act and other mandatory statutory liability provisions remains unaffected.
- (2) For ordinary negligence outside paragraph 1, we are liable only for breach of an essential contractual obligation. This means an obligation whose fulfilment is necessary for proper performance of the contract and on whose observance the customer may ordinarily rely. Liability in such cases is limited to loss typical of the contract and foreseeable when it was concluded. Otherwise, liability for ordinary negligence is excluded.
- (3) These provisions apply to all contractual and non-contractual claims for damages and, correspondingly, claims for reimbursement of wasted expenditure, including claims relating to defects, delay, impossibility of performance or breaches during negotiations. They also apply for the benefit of our legal representatives, employees and persons used to perform our obligations. Statutory rules on the burden of proof are not altered.
- (4) Limitation of claims arising from defects is governed by clause 7(8) and (9). Otherwise, statutory limitation periods apply. Liability under paragraph 1 is not subject to the other limitations of liability in these terms.

## 9 Retention of title

- (1) Goods supplied remain our property until all present and future claims arising from our business relationship with the customer have been paid in full. Where a current account is maintained, retention of title secures the relevant balance. The customer's rights to release of security set out below remain unaffected.

- (2) The customer must treat goods subject to retention of title with due care and carry out necessary maintenance and inspections in good time at its expense. To the extent economically reasonable having regard to the goods' nature and value, it must adequately insure them at its expense against customary risks, particularly fire, water damage and theft. The customer hereby assigns related claims against insurers to us up to the amount of our secured claims; we accept that assignment.
- (3) The customer must not pledge goods subject to retention of title or transfer them by way of security. It must promptly notify us of seizure or other third-party interference, provide available documents and inform the third party of our ownership. The customer reimburses necessary costs of resisting such interference to the extent they cannot be recovered from the third party and the customer culpably caused the interference or breached its notification duty.
- (4) The customer may resell or process goods subject to retention of title in the ordinary course of business. It hereby assigns to us its resale receivables, including VAT, as security for our claims; we accept that assignment. For resale together with other goods or after processing, the assignment is limited to the invoice value of our goods including VAT or, where we hold co-ownership, the corresponding co-ownership share. If the resale receivable is included in a current account, the assignment covers the balance receivable to the corresponding extent.
- (5) The customer remains authorised to collect assigned receivables. We will revoke that authority only for an objective reason, particularly payment default or jeopardy to our payment claim caused by inability to pay. We may then require the information and documents needed for enforcement and disclose the assignment or require the customer to disclose it. Mandatory insolvency provisions remain unaffected.
- (6) Processing or transformation of goods subject to retention of title is carried out for us as manufacturer without creating obligations on our part. If processed with other items, we acquire co-ownership of the new item in the ratio of the invoice value of our goods including VAT to the value of the other processed items at the time of processing. To the extent that ownership does not arise in that manner, the customer hereby transfers the corresponding ownership or co-ownership to us; we accept the transfer. The rules on retention of title apply correspondingly to the new item.
- (7) On inseparable combination or mixing with other items, we acquire co-ownership under the applicable statutory rules. If the customer's item is the principal item, the customer hereby transfers co-ownership to us in the ratio of the invoice value of our goods including VAT to the value of the other combined or mixed items at that time; we accept the transfer. The customer holds our sole or co-owned property for us without charge.
- (8) The customer also hereby assigns to us remuneration claims against third parties resulting from incorporation of goods subject to retention of title into real property, up to the invoice value of our goods including VAT; we accept the assignment. Paragraph 5 applies correspondingly.
- (9) If the customer breaches the contract, particularly by payment default, we may withdraw from the contract and require return of goods subject to retention of title under the statutory conditions. Any period for performance required by law must be allowed. Merely asserting retention of title does not constitute a declaration of withdrawal. Following valid withdrawal and return, we may realise the goods; proceeds, less necessary and reasonable realisation costs, will be credited against secured liabilities. Restitution and any further damages are governed by statute.
- (10) If the realisable value of our security exceeds the secured claims by more than ten per cent, we will release security to the corresponding extent at the customer's request. We select the security to be released, taking reasonable account of the legitimate interests of the customer and third parties.
- (11) The creation, effectiveness and enforcement against third parties of ownership, co-ownership, assignments and security rights are subject to the law applicable to those proprietary and security

matters. The customer must reasonably cooperate in formalities agreed as necessary for the protection of our rights in the country concerned. This does not establish a security right where the applicable law does not recognise it.

## 10 Product selection and proper use

- (1) The customer must provide complete and correct information about the operating conditions needed for the agreed design and use. Where relevant, this includes medium, pressure, temperature, materials requirements, installation conditions and particular safety and approval requirements. Any examination, advisory or warning duties assumed by us remain unaffected.
- (2) Installation, commissioning, operation and maintenance must be carried out by appropriately qualified personnel in accordance with the instructions provided by us, agreed technical specifications and applicable safety requirements. The customer must ensure necessary instruction and training within its area of responsibility.
- (3) If a safety-related defect is identified, further use must cease to the extent necessary to prevent danger. The customer must promptly inform us and take reasonable protective steps as part of its statutory duty to mitigate loss. This does not transfer our statutory product responsibilities to the customer.

## 11 Governing law and jurisdiction

- (1) The contract is governed by the law of the Federal Republic of Germany, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG). This choice does not exclude directly applicable European Union law or mandatory provisions that remain applicable irrespective of the choice under the relevant conflict-of-laws rules, including Regulation (EC) No 593/2008 (Rome I).
- (2) For cross-border business contracts to which Article 25 of Regulation (EU) No 1215/2012 (Brussels I Recast) applies, the courts of Hamburg, Germany, have exclusive jurisdiction over disputes arising out of or in connection with the contract, subject to the following option in our favour: we may also bring proceedings before the courts having jurisdiction for the place of the customer's domicile in a Member State of the European Union, as determined under Articles 62 and 63 of that Regulation. No option to sue in an unspecified third country is created by this clause. Mandatory protective and exclusive jurisdiction rules remain unaffected.
- (3) The agreement on jurisdiction must meet the applicable formal requirements, in particular Article 25 of Regulation (EU) No 1215/2012 where applicable. Electronic communication providing a durable record of the agreement is equivalent to writing for that purpose. A reference to these terms alone does not dispense with the need for effective agreement and incorporation. Where Article 25 does not apply, an agreement on jurisdiction takes effect only to the extent permitted by the applicable rules; for purely domestic German transactions, this requires in particular that the customer is a merchant, a legal entity governed by public law or a special fund governed by public law, unless another statutory basis permits the agreement.
- (4) The place of performance of our delivery obligation is the works or warehouse in Hamburg specified in the order unless otherwise agreed or required by the nature of the obligation. This provision does not create an additional jurisdiction where an agreement on jurisdiction would be impermissible.
- (5) If a provision is wholly or partly invalid or has not become part of the contract, the remaining provisions continue to apply in accordance with section 306 BGB. The applicable statutory provisions replace the affected provision.

S+J Armaturen GmbH

## 12 Company and contact details

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