

## **General Terms and Conditions of Delivery and Performance**

### **§ 1 General Terms**

These General Terms and Conditions of Delivery have validity for all of our deliveries and performances. Conditions of purchase and other conditions from our customers only have validity to the extent we have explicitly consented to them in writing.

The following terms and conditions only have validity toward entrepreneurs in the meaning of Sections 310, 14 of the German civil code (*BGB*).

### **§ 2 Conclusion of a Contract / Agreements**

Agreements and contracts are only binding with our written confirmation, this also being the case should such be arranged by our representatives or employees.

### **§ 3 Delivery and Default, Reservation of Fulfilment**

Each delivery obligation is subject to a reservation that we also receive deliveries correctly and on time, the exception being if we should be responsible for the incorrect or delayed delivery to ourselves. Should we be unable to deliver to the customer due to an incorrect or delayed delivery to ourselves, we shall inform the customer of this without delay as soon as we gain knowledge of this.

Should delivery delays result from a force majeure or similar events, especially industrial action, machine failures, transport obstructions, etc. we are to be granted an extension of the delivery period that is reasonable when taking the circumstances into account. Should the delivery impediment last longer than 90 days, we have the right to rescind the contract in part or in its entirety or we can also demand a reasonable adaptation of the contract.

Should a delivery be rendered impossible and we are responsible for such an impossibility, the claims for compensation that the customer can assert are restricted to 5% of the value of the part of the delivery that cannot be expediently used on the grounds of the impossibility. This restriction does not have validity in as far as there is liability on the grounds of intent, gross negligence or death, physical harm or health impediments; this is not related to a changing of the onus of proof to the detriment of the customer. The right of the customer to rescind the contract remains unaffected.

The fulfilment of the contract is subject to the condition that no impediments exist on the grounds of German, US-American and other applicable national, EU or international foreign trade provisions in addition to such not being contradicted by embargos or other sanctions.

Should the shipping or delivery be delayed by a period exceeding one month after notification of the readiness for shipping has been made as a result of such a delay being requested by the customer, we can invoice the customer with storage charges of 0.5% of the value of the deliveries for each additional month or part of a month, not exceeding a total of 5% however. The parties to the contract have the right to furnish proof of the storage costs being higher or lower respectively.

#### **§ 4 Erection and Assembly**

We are only responsible for assembly and dismantling work on the merchandise, e.g. with installations should this have been separately agreed to.

Should nothing to the contrary be agreed to in writing, the customer is to complete all excavation work, construction work and other ancillary work carried out on time at its expense / have such work carried out. It is responsible for the provision of the implements and materials such as scaffolding, lifting gear, etc. in addition to energy and water with the connections, heating and lighting. The place of assembly is to include adequately sized, dry and lockable rooms made available for machine components, materials and tools in addition to the employees also being provided with adequate work and recreation rooms. Any information that is necessary in connection with the position of concealed electricity, gas and water lines or other installations in addition to the static data are to be made available without this requiring an explicit request.

Should assembly and/or disassembly work be delayed on grounds for which we are not responsible the customer is to bear reasonable costs for waiting times and additional travel expenses for the assembly staff that this might cause.

Should we demand acceptance of our work after it has been completed, the customer is to act accordingly within a period of two weeks. The acceptance shall otherwise be deemed to have taken place should no fundamental deficiencies exist. The acceptance is also deemed to have taken place should the delivered object be taken into operation (after completion of an agreed test phase should one have been agreed to).

#### **§ 5 Prices/Payment**

Should nothing to the contrary be agreed to, our prices that have validity on the date of delivery are deemed to be decisive.

Our prices are deemed to be net of packaging and transport costs and the Value Added Tax rate that is applicable on the date of delivery. The customer is to bear all other ancillary costs, especially public charges and customs duties that are incurred in connection with the delivery. This is not the case should this be contradicted by compulsory statutory provisions.

Should we assume responsibility for the erection, assembly or disassembly work and nothing to the contrary should be agreed to, the customer is to bear the agreed remuneration in addition to all necessary ancillary costs such as travel expenses and transportation costs in addition to daily allowances.

Should nothing to the contrary be agreed to or be stated in our invoices, the invoiced amount is payable immediately without a prompt payment discount being deducted. The customer can only avail itself of a right of retention and/or a setoff right to the extent in which its counterclaims are undisputed or have been determined by legal force.

We can avail ourselves of our rights pursuant to Section 321 et seq. BGB should it be discernible after conclusion of the contract that our payment claim is at risk on the ground of an inability to pay on the part of the customer, should the customer be in arrears with a considerable amount, or should other circumstances occur that provide grounds for an indication that the solvency of the customer has worsened considerably.

## **§ 6 Passing of the Risk/Shipping**

In the case of goods that are suitable for transportation, the risk passes to the customer as soon as the goods have been handed to the freight forwarder or the carrier, irrespective of whether the customer or we have assumed the shipping costs or the delivery. We only take out insurance cover when instructed to do so by the customer, it also bearing the costs incurred.

Should the shipping be delayed at the request of the customer or due to circumstances for which we are not responsible, the risk passes to the customer upon notification being made of the readiness for shipping at the latest.

## **§ 7 Warranty, Warranty Period**

a) Used machines and installations are sold subject to an exclusion of any warranty for material defects.

b) We otherwise assume liability for material defects as follows:

Material defects are to be notified in writing without delay. In the event of the notification of defects being justified and made within the time limit, we are entitled to remedy the defect or deliver goods that are free from defects according to our choice. In the event of the subsequent performance being unsuccessful or should the subsequent performance be refused, the customer is entitled to rescind the contract after an unsuccessful termination of a reasonable time limit or it can reduce the purchase price. Should the defect not be significant or should the goods already have been processed, it only has a right to reduce the purchase price.

Subsequent performance claims are statute-barred after a period of 12 months commencing with the statutory commencement of the limitation period; this also has validity with regard to a rescinding of the contract and a reduction of the purchase price. This time limit does not have validity should the legislator provide for longer time limits pursuant to Sections 438 subsection 1, No. 2 (buildings and items used for buildings), 479 subsection 1 (recourse claims) and Section 634 a subsection 1, No. 2 (construction defects) BGB or in cases of intent, malicious concealing of the defect and in the case of a non-adherence to a quality warranty. The legal provisions regarding a suspension of the running of time, suspension and a recommencement of the time limits remain unaffected.

In the case of a justified notification of defects being made that is not statute-barred, the customer is only entitled to withhold payment in as far as this is in a reasonable relationship to the defects that have occurred.

Claims for defects are excluded in the case of there only being an insignificant deviation from the agreed quality, should the usability only be impaired to an insignificant extent, in the case of normal wear, or damage that has occurred after the passing of the risk as a result of an incorrect handling, excessive load, unsuitable operating materials, defective construction work, unsuitable foundation soil or grounds resulting from external influences that are not deemed to be a requirement pursuant to the contract and software errors that cannot be reproduced. Claims for defects are also excluded for modifications or repair work that is not carried out correctly by the customer or third parties.

Should the customer subsequently transfer the purchased item to a place other than that stated in the contract, the assertion of subsequent performance claims by the customer are excluded as regards expenditure that is incurred as a necessity for a subsequent performance, this especially being transport costs, infrastructure costs, labour and material costs, should these be increased as a result.

## **§ 8 Claims for Compensation**

The assertion of claims for compensation and other claims over and above the foregoing are excluded, irrespective of the legal grounds. This is not the case should we have compulsory liability on the grounds of the German Product Liability Act, in the case of intent or gross negligence, death, health impairments or on the ground of an infringement of fundamental contractual obligations (major obligations). In cases of a culpable infringement of a fundamental contractual obligation and in cases in which we can merely be accused of having committed a negligent infringement of the contract, our liability to pay compensation is restricted to an amount that would be reimbursable in the event of damage being caused that is typical for the contract and foreseeable. The foregoing provision does not constitute an amendment to the onus of proof to the detriment of the customer. The legal onus of proof provisions remains unaffected.

Should our liability be excluded or restricted, this also has validity for the liability of our employees, representatives and vicarious agents.

## **§ 9 Reservation of Title**

The delivered items remain our property until such time as all claims arising from the business relationship with the customer have been fulfilled, irrespective of the legal ground. The reservation of title also remains in force should individual receivables be included in the invoice and the balance is struck or has been recognised.

As long as the customer meets its obligations towards us and is not in default, it is entitled to sell the goods that are delivered subject to a reservation of title in the regular course of business and subject to a reservation of title. A pledging or transfer of ownership by way of security is prohibited. The customer already assigns its claim from the reselling of the goods that are subject to a reservation of title to us at this moment in time in the amount of the value of the delivery. We accept this assignment. In the case of goods being sold that we are co-owners of, the assignment of the claim is deemed to be of the same value as our co-ownership share. When requested to do so by us, the customer has an obligation to informing its purchaser of the assignment to us and to issuing us with the documents that are required for the collection.

We authorise the customer in the scope of the regular course of business to collect the claims that have been assigned to us from the resale. Collected payments from the resale are to be kept in trust on our behalf, these then being transferred to us. We are entitled to withdraw the collection authorisation should an important ground especially a payment default, suspension of payments, the commencement of insolvency proceedings or substantiated indications for an over indebtedness or pending insolvency of the customer exist.

Pledges, transfers of ownership by way of security and any assignment are not permitted. We are to be notified of any third party access to the goods that are subject to a reservation of title without delay so that we can assert our rights. We shall release the security that our customer has granted us as long as the realisable value of the existing security exceeds the secured claims by more than 20%.

## **§ 10 Place of Performance, Legal Venue, Applicable Law**

It is agreed that Iserlohn is the place of performance.

The exclusive legal venue is the court with jurisdiction for the legal domicile of our company. We are entitled to take legal action against the customer before the court with jurisdiction for it however.

German law is exclusively applicable.

## **§ 11 Binding Nature of the Contract**

Should one of the foregoing provisions be ineffective or should this be the case in the future, this has no effect on the effectiveness of the other provisions. On the contrary, the parties to the contract are to replace the ineffective provision with an effective provision that comes as close as possible to the invalid provision in legal and commercial terms.

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