

**1. General Provisions, Scope of Application**

- 1.1. These Standard Terms and Conditions of Sale and Delivery ("T&C") shall apply to all our business relationships with the customer ("Customer"). These terms and conditions are applicable only to Customers who are entrepreneurs (as defined in Section 14 German Civil Code [*Bürgerliches Gesetzbuch*; "*BGB*"], legal entities under public law, or special funds under public law.
- 1.2. These T&C shall apply in particular to contracts for the sale and/or the delivery of movable goods ("Goods") regardless of whether we manufacture the Goods ourselves or purchase them from suppliers (Sections 433, 650 *BGB*). Unless agreed otherwise, these T&C shall apply in the version valid at the time of the Customer's order or, in any event, as last communicated in text form to the Customer and shall serve as a master agreement for similar future contracts without our having to refer to these T&C again in each individual case.
- 1.3. These T&C shall apply exclusively. The Customer's deviating, opposing or supplementary standard terms and conditions shall not become an integral part of any contract unless we expressly agree to their validity, and only then and to the extent agreed. This requirement of our consent shall apply in any event, for example also in cases where we carry out deliveries to the Customer without any reservation while being aware of the Customer's standard terms and conditions.
- 1.4. Any individual agreement entered into with the Customer in individual cases (including collateral agreements, supplements and amendments) shall in any event take precedence over these T&C. Save for evidence to the contrary, a writ-

ten contract with the Customer or our written confirmation, as applicable, shall be authoritative in determining the content of any such agreement.

- 1.5. Reference to the applicability of the provisions of the law merely serve the purpose of clarification. Those statutory provisions shall thus apply also without any such clarification, unless they were directly modified or expressly excluded in these T&C.

**2. Offer and Conclusion of Contract**

- 2.1. Our offers are subject to change and non-binding. This shall also apply if we have provided the Customer with catalogues, technical documentation (such as drawings, plans, computations, calculations, references to DIN standards), other product descriptions or documents, including those transmitted electronically, to which we reserve proprietary rights and copyrights.
- 2.2. The Customer's order for the Goods shall be considered a binding offer. Unless provided otherwise in the order, we shall be entitled to accept this offer within eight (8) days of receiving it.
- 2.3. The acceptance of the offer may be expressed either in writing (e.g. by confirmation of order) or by delivery of the Goods to the Customer.
- 2.4. The legal relations with the Customer shall be governed solely by the contract entered into in writing, including these T&C. That contract fully stipulates all agreements between the parties thereto with regard to the subject matter of the contract. Any oral promises made by the Customer prior to entering into this contract are not legally binding, and oral agreements of the parties shall be replaced by the written contract, unless it

**Standard Terms & Conditions of Sale and Delivery (Last updated: May 2019)**

has been expressly established that they continue to be binding.

**3. Copyright and Secrecy**

- 3.1. All samples and documents made available to the Customer (such as technical descriptions, drawings, illustrations, specifications as to color and weight) contain approximate values only, as customary in the industry. We shall be entitled at any time to make improvements and changes to these samples and documents and to the items to be delivered and services to be rendered, such as changes in construction or form, deviations in color, to the extent that these improvements and/or changes are reasonable to the Customer. Standardized Goods are subject to the tolerances permitted according to the forms.
- 3.2. We reserve all property rights, copyrights, and/or any other intellectual property rights to all samples and documents within the meaning of the above Clause 3.1. These samples and documents may not be used without our prior written consent in any way other than for the performance of each of the contracts entered into with us, and they may in particular not be copied or made available to third parties. Upon request, the Customer must return them to us without undue delay.

**4. Time Limits and Dates**

- 4.1. Time limits and dates are binding on us only to the extent we have expressly agreed upon them in writing with the Customer in each case.
- 4.2. Periods for the delivery of items or the performance of services shall start to run at the date the order confirmation is dispatched, but not before the delivery of the documents, authorizations, and re-

leases to be provided by the Customer, and not before receipt by us of payments that have fallen due.

- 4.3. If the contract entered into between us and the Customer is amended or supplemented at the Customer's request, the periods for the delivery of Goods or the performance of services shall be reasonably extended taking our additional effort resulting from the Customer's request for amendment or supplement into consideration.
- 4.4. We shall not be liable for the impossibility of delivery or for delays in delivery provided this has been caused by force majeure or other events that were not foreseeable at the time of entering into the contract (such as disruptions of operations of all kind; difficulties in procuring materials or energy; delays in transport; strikes; lawful lockouts; lack of manpower, energy or raw materials; difficulties in obtaining the required authorizations from authorities; governmental acts; or the failure of suppliers to provide proper or timely delivery), which are beyond our reasonable control. If any such event renders the delivery or the performance of the service significantly more difficult or impossible and if the duration of the impediment is not merely temporary, we shall be entitled to rescind the contract. If the duration of the impediment is temporary, then the periods for the delivery of items or the performance of services shall be extended or the respective deadlines deferred by the duration of the impediment plus a reasonable lead time. If the Customer cannot reasonably be expected to accept the delivery or the service due to the delay, the Customer may rescind the contract by immediate written notice to us.

4.5. We shall be entitled to cancel the contract entered into with the Customer if our supplier fails to deliver to us or delivers late for reasons beyond our control, so that we are not able to perform our obligations to the Customer at all or in a timely fashion.

4.6. If the shipment of items to the Customer is delayed based on the Customer's request, we will store the items to be delivered and charge the Customer with the costs incurred by such storage starting one month after the Customer's receipt of our notice of readiness to make delivery. Our right to rescind the contract and/or claim damages (see Clause 6.2) after the unsuccessful expiration of a reasonable date set by us for acceptance of delivery by the Customer shall remain unaffected.

4.7. We shall be entitled to partial deliveries only if

- the partial delivery is useful to the Customer considering the designated use of the item according to the contract;
- the delivery of the remainder of the ordered Goods is guaranteed; and
- the Customer does not incur substantial additional efforts or costs due to the partial delivery (unless we agree to assume these costs).

## **5. Prices**

5.1. Our prices are quoted net in EURO, ex Bremen, plus transport, packaging and other ancillary costs, which we shall invoice separately to the Customer. Unless agreed otherwise, we shall be entitled to determine the shipping method (in particular the carrier, shipping route, packaging) ourselves.

5.2. The statutory value-added tax is not included in our prices and shall be shown separately in our invoices. The same shall apply to import duties and public charges.

5.3. The measurements of the items to be delivered determined for each shipment by us or our agents at the place of dispatch of the delivery shall govern the calculation of our prices invoiced to our Customers.

## **6. Invoices and Payments**

6.1. Our claims against the Customer for payment shall become due and payable upon the Customer taking delivery of the item or declaring acceptance of the service performed, respectively. The amount payable specified in our invoice must be paid to us within the agreed payment term.

6.2. If we have agreed on payment by installments with the Customer and the Customer is in arrears of payment of one installment or an amount corresponding to one installment or more, our entire claim for payment shall fall due immediately.

6.3. Deductions, in particular cash discounts, are subject to a written agreement.

6.4. The Customer shall owe us interest in the amount of 5% p.a. from the due date, and annual interest in the amount of 8 percentage points above the base interest rate applicable from time to time from the date of default. We reserve the right to claim further damages for default of payment on the part of Customer.

6.5. If, after having entered into the contract with the Customer, it becomes apparent that our claim against the Customer for the payment of the purchase price is jeopardized by the Customer's inability to perform (e.g. if a motion to institute in-

solvency proceedings is filed), we shall be entitled on the basis of the law to refuse performance and, after setting a period to the other party where appropriate, to rescind the contract (Section 321 *BGB*). Where contracts for the manufacture of items that are not fungible are concerned (custom-made items), we may rescind the contract immediately; the statutory provisions regarding the right to dispense with setting a period for performance by the other party shall remain unaffected.

## **7. Taking Delivery/Acceptance**

- 7.1. The Customer must take delivery of the items delivered in accordance with the contract and accept the services rendered in accordance with the contract without undue delay but no later than within eight (8) business days of our request, ex warehouse in Bremen.
- 7.2. If the Customer is in delay of acceptance, or if the Customer fails to cooperate, or if our delivery is delayed for other reasons for which the Customer is responsible, we shall be entitled to claim compensation for the resulting damage, including additional expenses (e.g. storage costs). The amount of liquidated damages we charge in these events is EUR 100.00 per calendar day as of the delivery date or, in the absence of such date, as of the date of the notice of readiness of the Goods for dispatch.

Providing proof of higher damages and our legal claims (in particular the reimbursement of additional expenses, adequate compensation, rescission of contract) shall remain unaffected; the liquidated damages shall, however, be set off against any additional claims for money. The Customer shall be allowed to prove that we have not suffered any damage at all or that our loss or damage is signifi-

cantly lower than the amount of liquidated damages specified above.

## **8. Assignment/Setoff and Retention**

- 8.1. The Customer is not entitled to assign its claims against us and rights under the contractual relationship to third parties. This shall not apply to claims for money.
- 8.2. The Customer may offset only against uncontested or finally adjudicated claims against us.
- 8.3. The Customer shall be entitled to exercise its right of retention only if its counterclaim is based on the same contractual relationship.

## **9. Place of Performance and Passing of Risk**

- 9.1. Our Bremen factory is the place of performance for our deliveries and services.
- 9.2. The risk of accidental loss, destruction or deterioration of the delivery item shall pass to the Customer upon taking delivery thereof, but no later than upon this item leaving our warehouse. This shall also apply to partial deliveries, and also in cases where we have assumed additional services (such as carriage or transfer).
- 9.3. If we provide deliveries abroad, the Customer must make all information/documents required for our delivery abroad available to us in a timely fashion prior to dispatch. Any documents required by us that cannot be issued until after the arrival at destination must be forwarded to us by the Customer without undue delay.

## **10. Retention of Title**

- 10.1. We retain title to the items delivered by us to the Customer, and/or to the items installed by us on behalf of the Customer (hereinafter collectively referred to as "Reserved Goods") until receipt of all

**Standard Terms & Conditions of Sale and Delivery (Last updated: May 2019)**

- present and future payments arising from the business relationship with the Customer.
- 10.2. The Customer shall be entitled to resell, process, blend or combine as well as subsequently sell the Reserved Goods within the limits of a prolonged retention of title, provided that this is part of the ordinary course of business. The Customer shall not be allowed to pledge the Reserved Goods or transfer title thereto to serve as security.
- 10.3. Any processing or transformation of Reserved Goods by the Customer shall be exclusively on our behalf. If the Customer combines or blends Reserved Goods with other goods not belonging to us, we thereby acquire co-title to such new item on a pro-rata basis of the total value of the new item in proportion to the invoice value of the Reserved Goods. The new item resulting from processing shall also be deemed Reserved Goods within the meaning of these T&C.
- 10.4. The Customer hereby assigns to us in advance and as a security all claims and ancillary rights to which the Customer is entitled in connection with the resale of Reserved Goods, as well as any other claims against its insurers. If the items are exported, the Customer shall also assign to us all claims to which the Customer is entitled now or in the future from German and foreign banks in connection with the exportation, including, but not limited to, claims due under collection orders, L/Cs or confirmed credit, as well as under bonds and guarantees. If the Customer sells Reserved Goods together with other goods not belonging to us, either without or after processing, the claims specified above shall be deemed assigned to us on a pro-rata basis, i.e. in the net amount invoiced by the Customer for Reserved Goods. The assignments above shall not imply any deferral with regard to our claims for payment from the Customer.
- 10.5. The Customer shall retain its right to collect the claims assigned to us. Our authority to collect the claims ourselves at any time shall remain unaffected thereby. We agree and undertake, however, that we will not collect the claims for as long as the Customer is not in default of payment toward us and has not brought an application to institute insolvency proceedings, or such application has been rejected due to lack of assets. Should any of these cases occur, the Customer shall provide us with all information and documents required for the collection of the claims assigned to us and disclose the assignment to its respective debtors.
- 10.6. The Customer must maintain Reserved Goods in proper condition, store them separately from other items and mark such Goods as owned by us. The Customer must notify us without delay of any impairment of our title to the Reserved Goods—in particular due to attachment of property or seizure—and provide us with copies of the record of attachment, etc.
- 10.7. Upon the Customer's request, we will retransfer to it any title we have to Reserved Goods and the claims assigned to us by way of security to the extent the value of the Reserved Goods exceeds the total value of our claims against the Customer by more than ten (10) percent.
- 10.8. In the event that the Customer is in breach of contract, including, but not limited to, its failure to pay the purchase price when due, we shall be entitled according to the law to rescind the contract with the Customer and/or to request return of the Goods based on our right of retention of title. Requesting the return

**Standard Terms & Conditions of Sale and Delivery (Last updated: May 2019)**

of the Goods does not automatically imply the rescission of the contract; rather, we are entitled to request the return of the Goods only and to reserve the right of rescission. Should the Customer fail to pay the purchase price when due, we shall be entitled to assert these rights only if we have previously unsuccessfully set the Customer a reasonable deadline for payment, or if the setting of such deadline may be dispensed with under the law.

**11. Lien**

- 11.1. In order to secure our claims under the business relationship with the Customer, the Customer shall grant us a contractual lien to all objects having come into our possession.
- 11.2. This lien shall also extend to any claim we have against the Customer based on work performed for the Customer and claims due to replacement provided by us, as well as those resulting from any other performance.

**12. Defects**

- 12.1. Unless provided otherwise herein, the Customer's rights in the event of defects of quality and in title (including faulty shipment or short delivery) shall be governed by the law. Special provisions of the law regarding the final delivery of Goods to consumers (recourse to initial supplier pursuant to Sections 478, 479 BGB) shall remain unaffected in any event.
- 12.2. The basis of our liability for defects is first and foremost the agreement made concerning the quality of the Goods. Any and all product descriptions that form the subject matter of the individual contracts shall be deemed an agreement on the quality of the Goods; whether the prod-

uct description is provided by the Customer, the manufacturer or by us does not make any difference.

- 12.3. To the extent that the quality has not been agreed upon, the question of whether or not there is a defect shall be determined in accordance with the law (Section 434 (1) sentences 2 and 3 BGB). We decline, however, any liability with regard to public statements made by the manufacturer or any other third party (such as advertising messages).
- 12.4. The Customer's warranty claims are subject to the Customer having fulfilled its legal requirements to examine the Goods and giving notice of defect (pursuant to Sections 377, 83 German Commercial Code ["HGB"]). If the item delivered is defective, we may first choose whether we fulfill our obligation by remedying the defect (repair) or by providing an item free from defects (replacement). Our right to refuse the chosen manner of cure as provided under the law shall remain unaffected. We shall be entitled to make the cure owed by us conditional on the Customer paying the purchase price when due. The Customer, however, shall have the right to retain a reasonable portion of the purchase price commensurate with the defect. The Customer must allow us the time and opportunity we need to perform the cure owed and must in particular hand over the item complained of for inspection.
- 12.5. All expenses necessary for the purpose of inspection and cure, including, but not limited to the costs of transportation, fares/toll, labor and material costs, shall be borne by us if there is an actual defect. If, however, the Customer's request to remedy a defect turns out to be unjustified, we shall be entitled to claim reim-

**Standard Terms & Conditions of Sale and Delivery (Last updated: May 2019)**

bursement of the costs incurred by us thereby.

- 12.6. Should the cure fail, or a reasonable period set by the Customer for this purpose has lapsed in vain, or if there is no requirement under the law to grant such period, the Customer shall have the right to rescind the contract or reduce the agreed-upon price. However, in cases of minor defects, there is no right of rescission.
- 12.7. The limitation period for defects in quality and of title is one year and shall start upon passing of risk. This shall not apply if longer periods are applicable pursuant to Sections 438 (1) No. 2, 479 (1), 634a (1) No. 2, and 651 *BGB*, or if we fraudulently concealed the defect, or any of the liability cases mentioned in Clause 13.1 below has occurred.
- 12.8. Subject to Clause 13 hereof, we deliver used items only under exclusion of warranty for defect of quality and in title.
- 12.9. Our obligation to pay damages shall be governed by the following Clause of these T&C.
- 12.10. These provisions do not constitute a reversal of the burden of proof to the Customer's disadvantage.

**13. Other Liability**

- 13.1. Unless provided otherwise in these T&C including the provisions set out below, we shall be liable in the event of a violation of contractual and non-contractual obligations in accordance with the law.
- 13.2. We shall be liable for damages for any cause in law whatsoever within the scope of fault-based liability in the event of willful misconduct and gross negligence. In the event of slight negligence, we shall be liable, subject to the statutory limitations

of liability (e.g. diligence usually employed in our own affairs; insignificant breach of duty), only

- a) for any loss or damage resulting from loss of life, bodily injury, or damage to health;
  - b) for any loss or damage resulting from the breach of an essential contractual obligation (obligation the fulfillment of which allows for a proper performance of contractual obligations in the first place and in the observance of which the parties trust and may trust as a matter of course); in this case, our liability shall, however, be limited to the compensation of the foreseeable, typically to be expected loss or damage.
- 13.3. The limitations of liability resulting from Clause 13.2 shall also apply to breaches of duty by or in favor of persons whose fault we are responsible for according to the law. They shall not apply if we have fraudulently concealed a defect, or have assumed a warranty for the quality of Goods, and it shall not apply to claims of the Customer under the Product Liability Act.

- 13.4. Where a breach of duty is concerned that does not consist of a defect, the Customer may not rescind or terminate the contract unless we are responsible for such breach of duty. The Customer's unrestricted right of termination (in particular pursuant to Sections 650, 648 *BGB*) shall be excluded. In all other respects, the prerequisites and consequences laid down in the law shall apply.

**14. Choice of Law and Place of Jurisdiction**

- 14.1. These T&C and the contractual relationship between us and the Customer shall be governed by the laws of the Federal Republic of Germany, exclusive of any

**Standard Terms & Conditions of Sale and Delivery (Last updated: May 2019)**

uniform international law, including but not limited to the United Nations Convention on Contracts for the International Sale of Goods.

- 14.2. If the Customer is a merchant within the meaning set forth in the German Commercial Code, or a legal entity under public law, or a special fund under public law, our registered office in Bremen, Federal Republic of Germany, shall be the exclusive, as well as international, place of jurisdiction for any disputes arising directly or indirectly under the contractual rela-

tionship with the Customer. This rule applies *mutatis mutandis* if the Customer is an entrepreneur within the meaning of Section 14 *BGB*. In all cases, however, we shall also be entitled to bring action before the courts at the place of performance of the delivery obligation in accordance with these T&C or as set forth in an overriding individual agreement, or at the Customer's regular place of jurisdiction. Overriding statutory provisions, in particular regarding exclusive jurisdiction, shall remain unaffected.