



## **General terms and conditions of business and sale (apply equally as conditions in contracts for work and services)**

### **§ Article 1 General**

- 1.) The following provisions apply to all our deliveries and services, also future ones, including consultancy and ancillary services. On coming into force, our general terms and conditions shall supersede all previous versions.
- 2.) Our contractual partner (hereinafter referred to as the customer) shall recognise the provisions when an order is placed. Conflicting general terms and conditions of the customer are herewith expressly contradicted.

### **§ Article 2 Quotation and conclusion of contract**

- 1.) Unless otherwise expressly stipulated in writing, our quotations are without commitment. Contracts therefore do not become effective until our written order acknowledgement is issued.
- 2.) Supplements, amendments and ancillary agreements on conclusion of the contract must be made in writing to become effective. This also applies to any waiver of this requirement for the written form.

### **§ Article 3 Standing deliveries; partial deliveries**

- 1.) In the case of standing delivery contracts or call-off deliveries the customer must agree with us on the individual call-offs and delivery contracts as soon as possible. If the goods are not called off on time, the customer cannot demand punctual delivery. This also applies if a certain delivery period has been agreed.
- 2.) Goods which have been reported ready for dispatch must be called off immediately, otherwise we are entitled to store them at the cost and risk of the buyer/customer at our own discretion and charge them as having been delivered.
- 3.) Unless otherwise expressly agreed in writing, we are entitled to provide partial deliveries and partial services.

### **§ Article 4 Period of delivery and service**

- 1.) The delivery period starts on the date of our written order acknowledgement but not before complete clarification of all details of implementation; the delivery period is always non-binding on us and is only to be regarded as approximate.  
The delivery time is deemed to have been observed on the punctual notification that the goods are ready for shipment if dispatch is not possible due to no fault of ours or the works supplying the goods.  
The agreed delivery time shall be extended – irrespective of our right arising from any default of the buyer/customer – by the period by which the buyer/customer is in default with his obligations arising from this or any other contract. This applies mutatis mutandis if a delivery date has been agreed.  
If we ourselves are behind schedule, the buyer/customer shall set us a reasonable period of grace. On expiry of this period of grace, the customer may rescind the contract insofar as the goods have not been reported as being ready for shipment by the expiry of the period.
- 2.) If we are temporarily unable to provide the work/service, in whole or in part, or are substantially impaired as a result of force majeure, any agreed delivery time shall be prolonged by the duration of this impediment to performance. The same applies to a period set by the customer for providing the work/service, in particular to periods of grace in accordance with Sections 281 para. 1, 323 para. 1 of the German Civil Code (BGB). Incidents of force majeure include but are not limited to war, war-like situations, mobilisation, import and export bans and blockades. The following are equivalent to force majeure: transport obstructions, disruptions to operations, delays in deliveries of raw materials, strikes, lock-outs and other labour disputes as well as any other unforeseeable, extraordinary and non-culpable circumstances even if they occur at our suppliers or their sub-suppliers.
- 3.) The customer is not entitled to rescind the contract or claim damages prior to expiry of the period of delivery or service extended according to para. 2. The exclusion of the right of rescission shall end if the impediment to performance lasts for more than 3 months. Moreover, this exclusion does not arise if the customer is entitled to rescind the contract in accordance with Section 323, para. 2 of the German Civil Code (BGB) without setting a period of grace. If the impediment lasts for more than 3 months, we are also entitled to rescind the contract.

### **§ Article 5 Passing of risk**

- 1.) The risk of accidental loss and accidental deterioration passes to the customer on transfer of the goods to the carrier; this shall also apply if delivery is being made free destination. If our own vehicles are used for transport, the risk passes to the customer when they are loaded.

2.) The above para. 1 does not apply if the customer is a consumer pursuant to Section 13 of the German Civil Code (BGB).

3.) Persons who sign the delivery note on collection or at the unloading point are deemed by us to be authorised to accept and confirm receipt of the goods.

#### **§ Article 6 Condition of the goods**

1.) The condition of the goods is based on the relevant technical regulations. If we have to supply according to drawings, specifications, specimens or other customer specifications, the customer shall bear the risk of the suitability of the goods for the proposed application. Only the time of the passing of risk (Article 5) governs the contractual condition of the goods.

2.) The information and illustrations contained in brochures and catalogues are approximations customary in the branch unless we have expressly described them as being binding.

3.) If reference is made in quotations, order acknowledgements or other documents to goods descriptions, including but not limited to brochures, information sheets or processing instructions or these are otherwise included in a contract, this shall not constitute a warranty for a certain condition or durability of the goods described. The same applies to descriptions in relevant technical standards.

4.) Deviations in the goods delivered compared with those contractually owed, in particular with regard to dimensions, weight and quality, are admissible if they comply with the German Steel and Iron Standard (DIN Stahl und Eisen) or are in line with customary practice. Deviations in quantities of up to 15% are technically unavoidable and therefore also admissible. In the case of special dimensions, quantity deviations of up to 30% are admissible provided that we have expressly referred to this in the quotation or the order acknowledgement.

#### **§ Article 7 Rights and obligations of the customer in the case of defects**

1.) If the customer is an entrepreneur, he must inspect the goods immediately after delivery for their contractual compliance, including but not limited to their condition, lack of defects and any other defects. He must report the discovery of any deviations or defects to us in writing without delay, but at the latest one week after delivery of the goods. We have to be given the opportunity of examining the defects complained about.

The customer must submit a written complaint about concealed defects without delay but at the latest one week after their discovery. If the customer does not discharge his obligations to inspect the goods and report complaints, the goods shall be deemed to have been delivered in compliance with the contract.

2.) The customer must not install or otherwise use any goods complained about or which are visibly defective. If the customer infringes this obligation, we shall not be liable for any damage which is due to installation or any other use. Furthermore, in this case, the customer shall bear and, where applicable, reimburse us with the additional costs arising from the rectification of the defect caused by installation or other use.

3.) The customer is obliged to even except goods complained about and keep them safe insofar as their immediate return is not possible or would only involve substantial costs. The persons we have commissioned must be permitted to inspect the goods complained about.

4.) If a certain property of the goods has been agreed, any deviation therefrom shall only constitute an insubstantial defect if the suitability of the goods for the contractually assumed purpose is not impaired or only to a minor extent. In this case, claims for damages as well as the rescission of the purchase contract owing to the defect are excluded.

5.) If the goods delivered are defective and are deemed to be not in compliance with the contract according to para. 1, the customer's rights shall be based on the general statutory regulations unless otherwise established in these conditions.

6.) If the nature of subsequent performance selected by the customer is disproportionate, we may therefore refuse it if any other type of subsequent performance to rectify the defect is equally suitable and is not unreasonable for the customer for particular reasons.

7.) The customer may only refer to a failure of the subsequent performance if at least 2 subsequent attempts have been to no avail and at least 3 weeks have passed since the complaint was reported. A period set by the customer for subsequent performance is unreasonable if it is less than 3 weeks – calculated from the date we receive notification that a period of grace has been set. Any period of grace must be set in writing.

8.) If the customer has a statutory claim for damages owing to the defective goods, the amount of our liability shall be limited to the average damage which can be typically foreseen. This does not apply in cases of wilful intent and gross negligence and to damage resulting from injury to life and limb or health.

9.) The period of limitation for all rights of the customer owing to a defect in the goods delivered is shortened to one year. This shortening of the period of limitation does not apply if the goods delivered have been used for any structure in accordance with their usual application and this has caused the defect as well as in case of wilful intent and gross negligence and to claims for damages owing to an

injury to life and limb or health. Furthermore, the shortening of the period of limitation does not apply to the customer's rights of recourse laid down in Section 478 of the German Civil Code (BGB).

10.) If goods or quantities other than those owed are delivered, this is tantamount to a defect.

11.) If the customer is a consumer pursuant to Section 13 of the German Civil Code (BGB), the aforementioned paragraphs 1 to 9 shall not apply. The rights of the customer in the case of defects shall be based in this case exclusively on the statutory regulations.

#### **§ Article 8 Restriction on liability**

1.) As regards the infringement of material contractual obligations, we shall only be liable in cases of minor negligence up to the amount of the average damage which can be typically foreseen. This does not apply to damage arising from any injury to life and limb or health.

2.) As regards the infringement of minor contractual obligations, we shall only be liable if the infringement of the obligation is attributable to wilful intent or gross negligence. This does not apply to damage arising from any injury to life and limb or health.

3.) Paragraphs 1 and 2 apply mutatis mutandis to claims for damages other than contractual claims, including but not limited to claims arising from a tortious act, with the exception of claims arising from the German Product Liability Act. This restriction on liability also applies in favour of our salaried staff and wage-earners, employees, representatives and vicarious agents.

#### **§ Article 9 Retention of title**

1.) All goods supplied shall remain our property until full payment of the purchase price. If the customer is an entrepreneur (Section 14 of the German Civil Code (BGB)), the goods shall remain our property until full settlement of all claims arising from our business relationship. In this case retention of title shall also continue to exist if individual claims are included in a current invoice and a balance is formed and recognised.

2.) The customer is entitled to resell the goods in our possession (goods subject to retention of title) in the normal course of business. However, the customer herewith already assigns to us all claims arising from this resale, regardless of whether he sells the goods subject to retention of title without or after processing or whether the goods are joined or not to land or movable objects.

3.) If the goods subject to retention of title, after being sold or sold together with other goods which do not belong to us, are resold or connected to movable objects, the customer shall assign to us the claims due to him from his customers in the amount of the value of the goods subject to retention of title.

4.) If the goods supplied by us are treated or processed, the treatment or processing of the goods subject to retention of title shall be performed for us as manufacturers in accordance with Section 950 of the German Civil Code (BGB) without us incurring any liabilities therefrom. If the goods subject to retention of title are connected or mixed with other movable objects, we shall acquire co-ownership of the new objects in the ratio of the market value of our goods subject to retention of title to the value of the other processed objects at the time of processing. The customer must keep safe the newly produced object with the customary diligence free of charge to us.

5.) If the goods subject to retention of title or the objects produced therefrom become a major part of the land of a third party, the customer herewith already assigns his claims to us, replacing the installed objects with all ancillary rights up to the amount of the value of the goods subject to retention of title we supplied.

6.) The customer is authorised to collect any assigned claims. Our right to collect the assigned claims ourselves shall remain unaffected. However, we undertake not to do this as long as the customer duly discharges his payment obligations.

7.) The right of the customer to sale, process or install the goods subject to retention of title in the normal course of business only exists for as long as the customer discharges his payment obligations. It becomes null and void if the assets of the customer deteriorate considerably, including but not limited to imminent insolvency or an application for or the opening of insolvency proceedings against the customer's assets. In these cases, the customer's right to collect claims assigned to us also becomes null and void.

8.) On request, the customer shall hand over an accurate list of the claims assigned to us, together with the names and addresses of his customers, the value of each claim and the invoice dates and to provide us with all the information necessary to assert the assigned claims and to permit their examination.

9.) The customer shall keep the goods subject to retention of title safe free of charge. He shall insure them against the usual risks, including but not limited to fire, theft and water damage, to the customary extent. The customer assigns to us, in the amount of the market value of the goods, any claims for compensation which are due to the customer on the basis of any damage to the goods subject to retention of title against an insurance company or any other person.

10.) The customer is not entitled to pledge or transfer by way of security the goods subject to retention of title or the claims assigned to us. The customer shall notify us without delay of any attachments of the goods subject to retention of title or the assigned claims, indicating the pledgee.

11.) If the goods delivered are taken back owing to the retention of title, this shall not constitute a recession of the contract unless we expressly declare this. We are entitled to dispose of, by means of private sale, goods subject to retention of title which have been taken back.

12.) The retention of title in all its forms, described in paragraphs 1 to 11, shall continue until the full release from all contingent liabilities into which we have entered in the interest of the customer. In the case of payment using the cheque/bill of exchange procedure, the bill of exchange/direct debit procedure or any other procedure in which we sign a bill accepted by the customer for the purposes of discounting as an issuer and endorser, our claim for payment shall only be deemed to have expired and ownership has been transferred at the earliest when the customer has paid all bills of exchange and finally released us from our endorser's liability.

#### **§ Article 10 Payment**

1.) Our invoices are payable immediately and without deductions. We only accept cheques and bills of exchange after a relevant agreement and only on account of performance. All expenses and costs shall be borne by the customer.

2.) If the customer defaults on payment, we are entitled at our discretion to make further deliveries and services dependent on advance payments or the provision of securities, to demand damages instead of the work or to rescind the contract. Further-reaching claims for interest and damages shall remain unaffected.

3.) If partial payments have been agreed and the customer is more than 14 days in arrears with one instalment, the entire remuneration shall become due immediately.

4.) In the event of imminent insolvency or a deterioration in the assets of the customer, including but not limited to an application for the opening of insolvency proceedings, we shall be entitled to demand the immediate payment of all outstanding invoices, including those not yet due.

5.) An offset is only possible against counterclaims of the customer which we have recognised or which have been determined to be final and absolute.

#### **§ Article 11 Packaging**

1.) Unless otherwise agreed, the goods are supplied unpacked. If the customer wants packaging, the customer has to pay for this separately. If packaging, pallets, supports or similar are used for the delivery, they are to be returned to us free of charge immediately after delivery. If the packaging is not returned within one month after delivery, we shall charge the customer the new price.

#### **§ Article 12 Tools**

1.) If the customer pays us a share of the costs for tools, these shall remain our property, irrespective of any claims of the customer to design protection. The tools shall be used exclusively for deliveries to the customer as long as the customer discharges his acceptance inspection and payment obligations. We are entitled to scrap the tools three years after the last delivery to the customer.

2.) Tools which have been paid in full by the customer shall remain in our possession at least until the delivery contract has been performed. The customer is subsequently entitled to demand the return of the means of production if an agreement has been reached by mutual consent on the time of the handover and the customer has discharged his contractual obligations in full.

3.) If an order for tools is cancelled by the customer during their manufacture or before production of the delivery quantity ordered, the customer shall reimburse us with the total costs of the tools. This also applies if these costs exceed the share of tool costs originally determined.

#### **§ Article 13 Industrial rights**

1.) If deliveries are made according to drawings or other information of the customer and industrial rights of third parties are infringed as a result, the customer shall indemnify us for all claims in this respect. If the customer infringes his obligations arising from this contract, his industrial rights shall not conflict with the contractual utilisation of the goods by us.

#### **§ Article 14 Place of performance and venue**

1.) The place of performance for all reciprocal obligations arising from the contractual relationship shall be Sundern / Sauerland.

2.) If our customer is an entrepreneur, a legal person under public law or a public corporation, the venue for any and all disputes arising from the contractual relationship, including any cheque or bill of exchange proceedings, shall also be Sundern. However, we are also entitled to sue the customer at his general place of jurisdiction.

#### **§ Article 15 Applicable law**

The law of the Federal Republic of Germany shall apply exclusively to the contractual relationship.

As at: August 2007