

## Standard Terms and Conditions - Release 29 May 2023

### 1. Scope of Application

The following Terms and Conditions shall apply only to dealings with persons who are entrepreneurs within the meaning of the legal definition and with legal persons under public law and special funds under public law.

### 2. General Provisions

- 2.1 Our deliveries and services shall be based on these Terms and Conditions and on separate contractual agreements, where applicable. Purchasing terms of the Ordering Party shall not become part of the contract even if reference has been made to them by the Ordering Party.
- 2.2 Samples, estimates, drawings or similar information of physical kind shall remain our property. As far as this information is stored electronically, the copyrights shall remain with us. This information must not be made accessible to any Third Party.

### 3. Contents of Contract

- 3.1 If a written order confirmation has been issued, this confirmation shall be decisive for the scope of the goods or services to be provided by us. Otherwise, our offer shall be decisive. Any additional agreements and modifications shall require our written consent.
- 3.2 Our product information and other documents such as figures, drawings, sketches and dimensions shall become part of the contract only if qualified by us as binding.
- 3.3 If, in the course of permanent technological advancement, products are modified, we shall be entitled to supply the technically modified version. We shall be entitled to deviations from figures, drawings, descriptions, colors, dimensions, weights, quality-related and other specifications as far as these deviations, considering the mutual interests of both Parties, are acceptable to the Ordering Party. The Ordering Party shall be obligated to inform us explicitly at the moment when the order is placed if we are in no case allowed to deviate from descriptions and specifications.

### 4. Prices

In case of deliveries or services provided later than 4 months after the conclusion of the contract, we shall be entitled to charge an adequate overhead surcharge for any increases in wages and/or material prices that may have occurred in the meantime.

### 5. Payments, Default in Payment, Retention, Withdrawal

- 5.1 In case of default in payment, we shall be entitled to charge interest on arrears amounting to 8 percentage points above the current basic interest rate. This shall not affect our rights to provide evidence for greater damage.
- 5.2 For each reminder following the first dunning letter, we shall be entitled to charge a fee of 10 EUR.
- 5.3 The Ordering Party shall not be entitled to retain payments or to offset payments with any counterclaims that are contested by us and have not been determined as being final and conclusive by a court decision.
- 5.4 If the conditions of Section 321 of the German Civil Code (BGB) apply, we shall be entitled to demand securities. If any deadlines have expired without result, we shall be entitled to withdraw from the contract and claim damages.

### 6. Delivery Date/Deadlines (hereinafter referred to as "Delivery Time"), Default in Delivery

- 6.1 Delivery times shall only be binding if they have been qualified as binding in our order confirmation.
- 6.2 Observance of binding delivery times shall require that all commercial and technical issues have been clarified with the Ordering Party and that the latter has fulfilled its obligations to cooperate. This shall include payment of an agreed down payment. If the Ordering Party does not comply with this obligation to cooperate, the delivery time shall be extended appropriately.

- 6.3 Compliance of the delivery time shall be conditional on the fact that we have received the deliveries from our suppliers correctly and in due time.
- 6.4 If non-compliance with the delivery time is due to Force Majeure, industrial disputes or any other events beyond our scope of influence, the delivery time shall be extended appropriately. This shall also apply if such events occur at the sites of our sub-suppliers. We shall inform the Ordering Party about the start and the end of such events as soon as possible. We shall not be responsible for the events referred to above even if they occur during an existing default in delivery.
- 6.5 The delivery time is complied with if the delivery item has left the factory or a dispatch note has been issued before expiration of the delivery time. As far as an acceptance is required - except for cases of justified refusal to accept the delivery - the acceptance date shall be decisive or, alternatively, the notification of the readiness for acceptance.  
If dispatch or acceptance of the delivery item is delayed for reasons for which the Ordering Party is responsible, we shall be entitled to charge the costs we have incurred due to the delay, at least however 0.5 % of the invoice amount for each month, starting one month after the dispatch note or the ready-for-acceptance note. At the same time, all goods and services delivered by us up to that date shall become due for payment. After an appropriate deadline set by us has expired without result, we shall, however, be entitled to make other dispositions concerning the delivery item and provide the delivery to the Ordering Party after an adequately extended period of time. 6.6 Partial deliveries shall be admissible as far as they are reasonably acceptable for the Ordering Party.
- 6.7 The Ordering Party may withdraw from the contract without setting a deadline if the entire delivery becomes definitely impossible for us before the passing of the risk. Furthermore, the Ordering Party may withdraw from the contract, if the execution of a part of the delivery for a purchase order becomes impossible and the Ordering Party has justified reasons for refusing to accept the partial delivery. If this is not the case, the Ordering Party must pay the contractually agreed price for the partial delivery. The same shall apply to our inability to deliver. In all other cases, the scope of liability shall be determined by the provisions of Section 11.3 below.
- 6.8 If we are in default and the Ordering Party suffers damage as a result of this, the Ordering Party shall be entitled to request a flat-rate compensation for the delay. This compensation shall amount to 0.5 % for each week of the delay but not more than 5 % of the value of that part of the entire delivery which cannot be used in time or as agreed in the contract as a consequence of the delay. 6.9 If the Ordering Party grants us an adequate additional period of time if we are in default, allowing for the legally stipulated exceptional cases, and we do not observe the deadline, the Ordering Party shall be entitled to withdraw from the contract as far as this admissible in the framework of the statutory provisions.
- 6.10 Any further claims for default in delivery shall be determined exclusively by Section 11.3 of these Terms and Conditions.

## 7. Passing of the Risk, Acceptance

- 7.1 The risk shall pass to the Ordering Party when the delivery item has left the factory; this shall also apply to partial deliveries or if we have assumed additional responsibilities, e.g. transportation costs or delivery on site and installation. As far as an acceptance is required, this shall be decisive for the passing of the risk. Acceptance must take place without delay at the acceptance date or, alternatively, after we have issued a ready-for-acceptance note. The Ordering Party shall not be entitled to refuse acceptance in case of a minor defect.
- 7.2 We shall be entitled to insure all deliveries against transportation damage at the Ordering Party's expenses.
- 7.3 If the goods show evidence of damage caused during transportation when they arrive at the Ordering Party's site, the Ordering Party must immediately request a written report on the damage from the carrier.
- 7.4 If dispatch or acceptance is delayed or does not take place at all as a result of circumstances for which we cannot be held responsible, the risk shall pass to the Ordering Party on the day when we have issued a dispatch note or a ready-for-acceptance note. We agree to take out the insurance policy the Ordering Party requests, at the latter's costs.

## 8. Export to the USA and Canada

- 8.1 We do not permit any direct and indirect exports of our products into the USA and Canada.
- 8.2 The Ordering Party shall indemnify us from and against any claims raised towards us from the USA and Canada as a result of exporting products to these countries even if we consent to the export.

## 9. Retention of Title

- 9.1 We retain the title to and the right of disposition over all delivery items until all payments from the delivery contract and any contracts concluded before have been fully settled. This includes any claims with respect to checks and bills of exchange or current accounts. If liability from a bill of exchange is constituted for us in connection with the payment, the retention of title shall expire only after it has been excluded that we are held liable with respect to the bill of exchange.
- 9.2 Before the complete settlement of payments due to us as described in the paragraph above, the Ordering Party shall be entitled to further process the products delivered by us in the regular course of business unless a prohibition of assignment for the claims assigned to us in advance pursuant to Section 9.6 has been or is concluded with a Third Party. Prior to this, pledging or transferring the goods by way of security shall also be prohibited and reselling the goods shall be permitted only for resellers in the regular course of business provided that the reseller receives payment from his customer and forwards this payment to us without delay. Any costs arising for interventions shall be borne by the Ordering Party.
- 9.3 In case of seizures, confiscations or any other dispositions or interventions by a Third Party, the Ordering Party shall inform us immediately.
- 9.4 If the Ordering Party does not act in accordance with the contract, in particular in case of default in payment, we shall be entitled to take the goods back and the Ordering Party shall be obligated to hand out the goods to us.
- 9.5 Assertion of the retention of title and seizure of the delivery item by us shall not be considered as withdrawal from the contract.
- 9.6 The Ordering Party already now assigns to us a proportionate percentage of our invoice amount including VAT of all claims which become due for payment by customers or Third Parties from reselling the products as well as any ancillary rights connected thereto. This shall also apply in cases where the Ordering Party places the claims arising in connection with the resale of products into a current account with a customer or a Third Party. We accept this assignment.
- 9.7 In case of combination with real property or movable property of a Third Party as well as in case of working or processing in the framework of a work and services contract, the Ordering Party already now assigns to us its claims for compensation and/or the co-ownership share arising from the work in the proportionate amount of our invoice amount including VAT for the products subject to retention of title. We accept the assignment.
- 9.8 The Ordering Party is herewith authorized to collect the claim assigned to us in the framework of the regular course of business provided that the amounts received are forwarded to us without delay. In case of default in payment, an application for opening insolvency proceedings in or out of court or if a check or bill is protested, the authorization to collect the claims assigned to us shall expire.
- 9.9 As far as the items delivered have become an integral part of real property, the Ordering Party agrees to authorize us to dismantle the objects which may be dismantled without significantly impairing the building structure and to reassign ownership of the objects to us should the agreed deadlines for payment not be complied with by the Ordering Party. If the Ordering Party impairs our rights referred to above, it shall be obligated to pay damages. The costs for dismantling and any other costs shall be borne by the Ordering Party.
- 9.10 If the realizable value of the securities existing for our benefit exceeds our secured claims by more than 10 % on the basis of this retention of title alone or in combination with other securities, we shall be obligated to release securities, at our option, if requested to do so by the Ordering Party.
- 9.11 We shall be entitled to insure the delivery item against theft, fire, water and other damage at the Ordering Party's expenses unless the Ordering Party can produce evidence that the relevant insurance has already been taken out by the Ordering Party.

- 9.12 If an application for opening insolvency proceedings has been filed, we shall be entitled to withdraw from the contract and request that the delivery item be returned immediately.

#### 10.10. Liability for Defects (Warranty)

Subject to Section 11, we shall provide warranty as described below for defects of quality or title of the products delivered, any further claims being excluded:

##### Defects of Quality

- 10.1 Any parts that turn out to be defective for circumstances occurring before the passing of the risk shall, at our option, be either repaired or replaced by us. We must be immediately informed in writing if such defects are found. Any replaced parts shall become our property.
- 10.2 After consultation with us, the Ordering Party shall grant us the required time and opportunity for making all repairs and replacement deliveries which we deem necessary, otherwise we shall be exempt from any liability for the consequences resulting therefrom. Only in urgent cases where the operational safety is threatened or when disproportionately high damage is to be prevented - we have to be informed immediately should this happen - shall the Ordering Party be allowed to repair the defect or have it repaired by a Third Party and request reimbursement of the required expenses from us.
- 10.3 Of the direct costs arising due to the repair or the replacement deliveries, we shall pay the costs of the replaced parts, including dispatch free border, as well as the adequate costs for mounting/dismounting if there are justified reasons for the complaint; within the Federal Republic of Germany, we shall also pay the costs for our service technicians and auxiliary staff if this may be reasonably requested in the individual case. Any other costs shall be borne by the Ordering Party. Any replaced parts shall become our property.
- 10.4 Within the framework of the statutory provisions, the Ordering Party shall be entitled to withdraw from the contract if we - taking all legally admissible exceptions into account - have failed to make the required repairs or replacement deliveries within the adequate period of time granted to us for this purpose. In case of minor defects, the Ordering Party shall only be entitled to reduce the contractually agreed price. In all other cases, a reduction of the contractually agreed price shall be excluded.
- 10.5 No warranty shall be provided in particular for the following cases:  
Inadequate or inappropriate use, wrong mounting or commissioning by the Ordering Party or a Third Party, natural wear, wrong or negligent handling, inappropriate maintenance, inappropriate equipment, incorrect constructional work, unsuitable building ground, chemical, electrochemical or electrical influences provided they do not fall within our scope of responsibility.
- 10.6 If the Ordering Party or a Third Party carries out repairs in an inappropriate way, the Supplier shall not be liable for any consequences resulting therefrom. The same shall apply to modifications of the delivery item that are carried out without the Supplier's consent.
- 10.7 If the Ordering Party supplies parts or materials for processing or as a contribution for completing an order, these shall not be checked for non-evident defects in the framework of an incoming inspection.

##### Defects of Title

- 10.8 If the use of the delivery item entails a violation of industrial property rights or copyrights, we shall, at our expenses, generally procure the right of further use for the Ordering Party or, as far as this is reasonably acceptable for the Ordering Party, modify the delivery item in such a way that the violation of property rights no longer exists.
- 10.9 If this is not possible under economically adequate conditions or within an adequate period of time, the Ordering Party shall be entitled to withdraw from the contract. Under these circumstances, we shall also be entitled to withdraw from the contract.
- 10.10 Furthermore, we shall indemnify the Ordering Party from and against any claims raised by the holders of the property rights in question if these claims are uncontested or final and conclusive on the basis of a court order.



10.11 Notwithstanding Section 11, we shall have no other obligations than those laid down in Section 10.8 in case of a violation of property rights and copyrights.

They shall apply only if

- the Ordering Party informs us immediately about any property rights or copyrights for which claims are raised, - the Ordering Party supports us adequately in our defense against such claims and/or permits us to carry out the modification measures referred to in Section 10.9,
- we have the right to choose the measures for defense, including extra-judicial settlements,
- the defect of title is not based on instructions given by the Ordering Party and
- the violation of a right has not been caused by the fact that the Ordering Party has modified the delivery item without our consent or used it in a way not corresponding to the contractual agreement.

## 11. Liability

- 11.1 If materials supplied by the Ordering Party are damaged or become unusable at our site, in particular during working/processing or repairing, we shall only be liable if the damage has been caused by gross negligence, but only up to the amount of 10% of the processing value unless unlimited liability is required by compulsory legal provisions. Materials belonging to customers shall be insured against fire at our expenses. Should the Ordering Party request any further insurance coverage, this request must be submitted in writing.
- 11.2 If the delivery item cannot be used by the Ordering Party according to contract because of our failure to implement or carry out correctly suggestions and consultations made prior to or after the conclusion of the contract or due to a violation of other secondary contractual obligations - in particular instructions for use and maintenance of the delivery item - the provisions of Sections 10 and 11.2 shall apply accordingly, excluding any further claims of the Ordering Party.
- 11.3 For damage that has not occurred on the delivery item itself, we shall be liable - irrespective of the legal cause - only in case of
- deliberate action
  - gross negligence on the part of the owner, the bodies or executives of the company
  - willful violation of life, limb and health
  - defects which we fraudulently concealed or the absence of which we guaranteed
  - defects of the delivery item as far as we are liable for personal injuries or material damage in connection with privately used objects pursuant to the Product Liability Act.
- 11.4 In case of willful violation of essential contractual obligations, we shall also be liable for gross negligence on the part of non-executive employees or for ordinary negligence; in the latter case, our liability shall be restricted to the typical damage that can be reasonably foreseen.
- 11.5 Any further claims shall be excluded.

## 12. Our Claim for Damages for Non-Fulfillment of the Ordering Party

If we are entitled to request damages for non-fulfillment, the minimum flat-rate damage to be compensated shall amount to 20 % of the agreed price without VAT. The amount of the damages is to be increased if we can provide evidence for higher damage or is to be reduced if the Ordering Party can provide evidence for lower damage.

## 13. Limitation

Any claims raised by the Ordering Party - irrespective of their legal cause - shall be time-barred after 12 months. In case of deliberate or willful action as well as for claims under the Product Liability Act the statutory periods of limitation shall apply. They shall also be applicable to defects on a building or for delivery items that have been used according to their typical use for a building and have caused its defects.

#### **14. Binding Character of the Contract**

- 14.1 Even if individual provisions of the contract are legally ineffective, the remaining parts of the contract shall remain binding. This shall not apply if adherence to the contract would mean an unacceptable hardship for one of the Parties.
- 14.2 If a provision is partially or entirely ineffective, the Parties shall immediately agree on another legally admissible way to achieve the economic success intended by the ineffective provision.

#### **15. Legal Venue, applicable Law**

- 15.1 Any disputes arising out of the contractual relationship shall be brought before the competent court having jurisdiction for the site of our enterprise. We shall, however, also be entitled to institute legal action at the place of business of the Ordering Party.
- 15.2 All legal relations between us and the Ordering Party shall be subject exclusively to the Law of the Federal Republic of Germany governing the legal relations among national parties. The application of the uniform UN Convention or any other conventions on the sale of goods shall be excluded.