

## 1 Scope of Application, Written Form

- 1.1 The following terms and conditions apply to all contracts concluded with our clients (in the following Customer) including all subsidiary agreements to the extent that the Customer is a business purchaser and the contract was concluded in exercising commercial or independent professional activity.
- 1.2 Our terms and conditions are exclusive. Any deviating conditions of the Customer are not valid unless we have agreed to them in writing. Our terms and conditions apply for all current business relationships and for all future dealings.
- 1.3 Orders, declarations of acceptance, amendments, additions, and other subsidiary agreements and agreements that were met before conclusion of contract require written form for their legal validity. Subsidiary agreements, amendments, or additions to contracts undertaken by employees who do not exercise representational authority are only valid if we confirm them in writing. The same applies to all quality guarantees.

## 2 Offers, Quality Specifications, Plans

- 2.1 Our price quotations, including the prices on our price lists, are subject to change if they have not expressly been declared binding. The Customer is bound to his order for fourteen days. A valid contract only comes to pass with the written confirmation of the order received, no later than the moment when the Customer accepts delivery.
- 2.2 Documents that are part of our offer, including drawings, plans, information regarding services, and weight and measurement information, are provided as exactly as possible, but should only be considered approximate if they have not been expressly declared binding. We reserve the right to make improvements and alterations to an extent that is customary in the trade and can be reasonably expected by the Customer. We retain title and copyright on all drawings and other documents; they may not be copied or made accessible to third parties or used by the Customer to manufacture the products themselves.

## 3 Prices, Price Changes, Tooling Costs

- 3.1 The prices agreed upon are net prices excluding the legally applicable value added tax. In the absence of a separate agreement, they apply from the factory (57339 Erndtebrück) and exclude costs of packaging and delivery. The prices are based on the price list valid at the time the contract was concluded. If delivery takes place more than four months after the contract is concluded, and there is no fixed pricing agreement, we shall be entitled to adjust the prices in an appropriate fashion to reflect changes in wages and salary, material and production costs.
- 3.2 For the construction of special tools and forms required to fulfill the Customer's order, in agreement with the Customer we will bill an appropriate tooling cost charge, but all tools and forms remain our property.

## 4 Time of Delivery, Force Majeure, Delivery of Supplies, Partial Delivery, Delayed Delivery, Delivery Quantity

- 4.1 Delivery dates or deadlines are non-binding if there is no written agreement indicating otherwise.
- 4.2 In cases of force majeure or other unforeseen circumstances, for example the disruption of production, legal strikes, or lock outs at our company or a supplier, that prevent us without any fault of our own from delivering goods at a binding or non-binding date or by the agreed upon deadline, these deadlines shall be extended in accordance with the duration of the circumstances concerned. If such a disturbance leads to delay of more than four months, both parties are entitled to withdraw from the contract. If delivery becomes impossible or cannot be reasonably expected due to the circumstances, we are released from the obligation to deliver and entitled to rescind the contract. In such a case, the Customer has no grounds to claims for loss or damages. Any statutory rights to rescission are unaffected by this.
- 4.3 In case of delayed or failed delivery by a supplier, we shall not be considered in delivery default unless the failed or delayed delivery was our own responsibility. If the delivery of goods ordered from a supplier does not take place for reasons that are not our responsibility, we shall be entitled to rescind the contract.
- 4.4 We are entitled to make partial deliveries to an extent that is can be reasonably expected of the Customer.
- 4.5 Besides delivery, the Customer can demand indemnification for damages due to delay if we are culpable of intent or gross negligence. In cases of minor negligence, liability is limited to damages that are foreseeable and typical of the contract, not to exceed ten percent of the agreed purchasing price for the components that are late in delivery.
- 4.6 Due to reasons of production, we reserve the right to deviate from the ordered amount by up to ten percent, provided that the Customer can reasonably be expected to accept such deviations while showing consideration for our interests. This will be reflected in setting the price. If production falls short and the lacking quantity is then requested by the Customer, this will be considered a new order.

## 5 Shipping and Transfer of Risk

- 5.1 In the absence of other agreements, deliveries take place subject to agreement at the cost and risk of the Customer; this also applies to carriage paid delivery or delivery by our vehicles.
- 5.2 In the absence of other agreements, risk shall be transferred to the Customer as soon as the goods are handed over by us to a forwarding agent, carrier, or any other person designated to execute shipment. If delivery is delayed due to circumstances that are not our responsibility, or in case the Customer fails to accept the goods in due time, although they were offered to him, the risk shall transfer to Customer after receipt of delivery notification.
- 5.3 After prior agreement with the Customer, we shall be entitled to take out transport insurance at the Customer's cost to the extent customary in the trade.
- 5.4 In case of the loss of a delivery during transportation, where replacement is supplied at the Customer's request and the original delivery is then later found, we shall not be required to take back the new shipment

## 6 Payment, Default in Payment, Right of Retention, Retention

- 6.1 Payment obligations shall only be considered fulfilled when we can access the exchange value of our account. Every payment shall be allocated to the oldest outstanding invoice. We reserve the right to refuse bills of exchange. Their acceptance is only on account of performance. Any and all discounting and bill charges shall be borne by the Customer and are immediately due upon payment.
- 6.2 Our receivables shall be due upon delivery of the goods at the Customer and within thirty days after delivery of the goods and delivery of the invoice without any deduction. If payment is not made within the stipulated time frame, the Customer shall be considered in default. Upon payment eight days after receipt of the goods we offer a 2 percent discount to the extent that the Customer is not in default with other payments. In certain cases, we reserve the right to complete an order only with payment in advance or cash on delivery.
- 6.3 In case of payment default, the outstanding claim shall be charged an interest of 8 percentage points over the current basic interest rate. We reserve the right to assert higher claims of damages.
- 6.4 Any discounts or refunds granted shall be cancelled if the Customer is in default. The same legal consequences obtain on the 31st day after the delivery of goods.
- 6.5 If after concluding a contract it becomes evident that our right to receive payment is in jeopardy as a result of deficient solvency on the part of the buyer, we can refuse to comply with the agreement until the Customer has complied with his side of the contract or provided a security against it. We can set an appropriate deadline in which the Customer step by step at its discretion will comply or provide a security. After this deadline, we are entitled to withdraw from the contract and/or to demand damages or compensation for our expenses. In case of rescission, those bills of exchange that we have already accepted will be given precedence.
- 6.6 Regarding our claims, the Customer can only withhold payment to the extent that the claims from the same contractual relation are undisputed, acknowledged or legally binding. Offsetting claims is only admissible to the extent that the counter claim is undisputed, acknowledged, or legally binding.

## 7 Notification of Defects and Defect Liability

To the extent that the defect was already present upon the transfer of risk under Section 5 Clause 2, we are liable for defects under the law, modified by the following provisions:

- 7.1 Obvious defects are to be reported to us immediately in writing, at the latest within eight days after receipt of the goods. Hidden defects are also to be reported immediately, at the latest eight days after their discovery. If no report is made, the delivery shall be considered free of defects and accepted.
- 7.2 If the Customer notifies us of a defect in a timely fashion, the Customer is entitled to rectification of the defect free-of-charge or delivery of a product free of defects at our discretion. We can refuse subsequent fulfillment if it is only possible at unreasonable costs. Subsequent fulfillment will take place at our headquarters; costs of installment, removal, and retrieval that result from subsequent fulfillment will not be covered by us. Replaced parts remain our property.

- 7.3 If and when subsequent fulfillment of the contract under Section 7 Clause 2 fails or cannot reasonably be expected of us, the Customer can at his discretion without prejudice to possible claims for damages or for reimbursement of expenses rescind the contract or decrease compensation. This applies also if subsequent fulfillment is unreasonably delayed, refused without justification, or is impossible and/or cannot be reasonably expected of the Customer.
- 7.4 Upon our demand, the Customer must allow us to inspect the goods declared defective or to have the goods declared defective returned to us. If the declaration of defects is unjustified, the Customer shall be required to compensate us for all expenses caused by the declaration, unless the Customer is not responsible for the unjustified claim of defects.
- 7.5 If and when defects are due to improper modifications or repairs of the delivered goods carried out by the Customer or by third parties at the request of the Customer, all warranty is excluded. This equally applies to defects that emerge after the transfer of risk as a result of improper or careless handling (e.g., non-adherence to operational instructions, inappropriate or improper storage or use, defective maintenance, assembly, or use by the Customer or a third party, excessive use, use of inappropriate materials, defective installation as well as external influences that not foreseen by the contract).
- 7.6 Warranty shall be excluded in case of merely insignificant divergence of the quality of the delivered goods from the agreed quality, of only irrelevant impairment of the usability, or of natural wear and tear. Divergences in terms of size and technical information, to the extent that they lie within the realm of admissible and/or usual tolerance for the goods in question and are reasonable for the Customer, accounting for our interests, do not justify a claim of defects.
- 7.7 Warranty claims (with the exception of damage claims due to defects) are limited to twelve months after delivery of goods.
- 7.8 The Customer only has a right to damage claims due to defects to the extent that our liability is not excluded or limited by Section 8 of these terms and conditions. Additional claims due to a defect beyond claims covered by Section 7 are excluded.
- 7.9 The provisions of Section 7 do not affect claims due to defects that were fraudulently concealed or were included in warranty.

## 8 Liability Limitations

- 8.1 We assume unlimited liability for willful misconduct and gross negligence.
- 8.2 In the event of a slightly negligent breach of a major obligation or of an accessory obligation whose breach will put the achievement of the contractual purpose at risk, or whose fulfillment is essential for the due and proper implementation of the contract, and whose fulfillment Customer could reasonably rely on („Essential Accessory Obligation“), liability shall be limited to damage typical of the contract and foreseeable at the time the contract was concluded. We bear no liability for the negligent infringement of accessory contractual obligations that are not essential accessory obligations. Liability in case of fraudulent concealment of defects or warranty as to quality as well as liability for claims under product liability law and damages resulting from the injury of life, body, or health is not affected by this. This does not lead to a change in the burden of proof to the Customer's disadvantage.
- 8.3 The limitation of liability according to Section 8 Clause 2 also applies to all consulting on use provided by us or our employees.
- 8.4 Customer's claims to damages for which our liability is limited under Section 8 are limited to one year after the legal stipulated date of limitations.

## 9 Retention of Title

- 9.1 All goods delivered remain under our title until the Customer has fulfilled all claims resulting from the contractual relationship and other claims subsequently acquired against the Customer in connection with the goods, irrespective of the legal basis of which they arise. The same applies to payments on specially designated claims.
- 9.2 Furthermore, the goods remain under our title until the fulfillment of all charges including all claims of balances to the current account to which we entitled against the Customer at present or in the future, irrespective of the legal basis of which they arise. In case of continuous accounts, goods subject to retention of title are considered security for unsettled balances.
- 9.3 The Customer has the right to sell delivered goods subject to retention of title in the ordinary course of business. In this event, the Customer assigns to us all claims of the goods subject to retention of title for ensuring all claims from the business relationship; we shall hereby accept this assignment in advance. To the extent that we hold title on the goods subject to retention of title, we are entitled in case of an objectively justified reason to rescind permission to resell.
- 9.4 The Customer is conditionally authorized to collect the assigned claim. For objectively justified reasons, we are entitled to rescind the authorization to collect. Our own authority to collect the receivables shall be unaffected hereby; we shall, however, undertake not to collect the receivables as long as the Customer duly complies with his payment obligations.
- 9.5 If the Customer does not properly satisfy his payment obligations and we are thus entitled to collect our claims on our own accord, the Customer is obliged at our demand to inform his own clients of the assignment and in addition to provide us with the information on the assignment and their debtors needed to exercise our rights in this respect and to supply us with all the required documentation.
- 9.6 Any treatment or processing of goods subject to retention of title takes place upon order of the supplier in the sense that we are to be considered the manufacturer according to § 950 of the German Civil Code, that is, at the point in time and degree of processing retain title of our products, without this arising in any additional obligations on our part. In the event of goods being processed, combined, or mixed by the Customer with other goods not owned by us, we are entitled to co-ownership of the new product in the relation of the invoice value of the goods under title to the invoice value of the other products at the time of the processing. The new item shall therefore be considered subject to retention of title in the sense of these terms and conditions. If the new item includes other components beside our goods subject to retention of title that either belong to the Customer or were delivered to the Customer under simple reserved title, the Customer hereby assigns his claims from the sale of this item as a security against all claims resulting from our business relationship. If this advanced assignment coincides with the other retained titles, we are entitled to claims equivalent to the ratio of the net invoice value of the goods subject to retention of title to other processed goods. We already grant the Customer a contingent right to the joint ownership created. The customer accepts this offer.
- 9.7 As long as retention of title persists, the pledging, mortgaging, leasing, or other assignment or modification of the object of purchase require our previous written permission. The Customer's right to sell the goods in proper business transfer under the aforementioned preconditions is left unchanged by this. In the event third parties have access to the goods subject to retention of title, for example, foreclosure measures, or the claims assigned to us in advance, the Customer shall inform us in writing immediately and will advise the third parties of our retention of title.
- 9.8 If the realizable value of the collateral securities which have been reserved for us exceeds our secured claims by more than ten percent, then we shall be obligated to the same extent to release collateral at our discretion upon the Customer's demand.
- 9.9 If Customer has not only temporarily suspended payments, if it files a petition for institution of insolvency proceedings against its assets or if insolvency proceedings are instituted against its assets, Customer is obliged upon our demand to return the goods subject to retention of title still under our title. Furthermore, in case of contract violation on the part of the Customer, especially delayed payment or a violation of obligations derived from the retention of title according to the provisions stipulated in Section 9, Clauses 3 to 7, we reserve the right to demand goods subject to retention of title from the Customer. The accepted return of the goods subject to retention of title only indicates rescission if this is expressly declared.

## 10 Place of Performance, Applicable Law, Place of Jurisdiction, Arbitration Clause

- 10.1 To the extent that the Customer is a merchant, if not otherwise provided or agreed, the place of performance of all delivery obligations is 57339 Erndtebrück and the place of performance for all obligations to pay is Tützing.
- 10.2 German law applies, excluding the UN Convention on the International Sales of Goods.
- 10.3 Exclusive place of jurisdiction for all current and future claims (including bills of exchange and checks) resulting from the business relationship is the court competent for our registered office, to the extent that the Customer is a business or a legal person under public law or if the Customer has its registered office abroad. We are also entitled to sue the Customer at any other court having statutory jurisdiction.
- 10.4 Instead of court litigation under 10.3, we can have a dispute decided at our discretion as complainant that relates to legal matters under our terms and conditions according to the Code of Arbitration of the Deutsche Institution für Schiedsgerichtsbarkeit e.V. (DIS) without recourse to standard legal procedure; the location of the arbitration is our headquarters; the language used in arbitration shall be German or English, at our discretion.

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