

TERMS AND CONDITIONS

§ 1 PURVIEW – OBJECT OF CONTRACT

1. Our GTB pertain to the supply of movables pursuant to contract as concluded between us and the customer. Said GTB pertain also to all future business relationships, even if not expressly agreed again.
2. Our GTB pertain exclusively; any provisions by the purchaser that are contrary to, or deviate from, our GTB are not recognized by us, unless we have expressly consented in writing to such. Our GTB shall also pertain when we, having knowledge of contrary terms on the part of the customer or such as deviate from our GTB, effect delivery without reservation.

§ 2 OFFER – CONCLUSION OF CONTRACT – OFFER DOCUMENTATION

1. The customer's order constitutes a binding offer, which we may (or may not) accept within four weeks of receipt by dispatching confirmation thereof or by proceeding with delivery. Any prior offers we may have submitted are without engagement.
2. We reserve copyright and rights of ownership over visual displays, diagrams, calculations, and other documentation. This pertains also to such written documentation as is designated "confidential". Before the customer passes said documentation on to third parties, he must obtain our express written consent to do so.
3. Diagrams, visual displays, measurements, weights, or other performance data, are only binding if expressly agreed to in writing. Moreover, we draw attention to the fact that technical deviations from performance data may occur, especially in connection with color differences, frame height, and module size.

§ 3 PRICES AND TERMS OF PAYMENT

1. All remuneration agreed upon shall be payable. In the event that the price has risen by the time of performance as a result of a changed market price or as a result of remunerations owed to third parties, which may have been brought into the performance process, having risen in the meantime, the higher price shall pertain. Should this higher price exceed by more than 20 percent the price originally agreed upon, the customer shall be entitled to withdraw from the contract. The latter entitlement must be availed of without delay following communication of the augmented price.
2. All prices are subject to value added tax as pertaining on the day of invoicement.
3. The entire amount of remuneration is payable within 14 days of receipt of the goods and is not subject to any discount, unless provision to the contrary has been made. Statutory regulations shall pertain in the event of payment being delayed concerning the consequences thereof.
4. Set-off entitlements may only be accorded the customer if his counterclaims are found to be legally valid, or have not been contested, or are recognized by us. The customer shall avail himself of his right of retention only if his counterclaim is based on the selfsame contractual relationship.

§ 4 TIME OF PERFORMANCE – PASSING OF RISK

1. All delivery deadlines and timelines that have been bindingly or non-bindingly agreed upon must be set out in writing.

2. With regard to delays to delivery and performance arising from force majeure and from events such as render delivery for us temporarily difficult or else render it impossible – e.g. especially strikes, lockouts, administrative decrees, etc., even if they occur at our subcontractors or their subcontractors – then we shall not be held accountable, even in the event of bindingly agreed timelines and deadlines. Events of this kind shall entitle us to postpone delivery and/or performance for the duration of such hindrance plus a reasonable leadtime; or else, such events shall entitle us to withdraw from the contract, in part or entirely, on grounds of that part of the contract which has not been performed.
3. In the event that said hindrance lasts longer than three months, the purchaser is entitled, after having granted a reasonable period of additional respite, to withdraw from that part of the contract that has not yet been performed. In the event that the delivery timeline is exceeded or that we are freed from our obligation, the purchaser shall not derive therefrom any claims for damages. We may only invoke the aforementioned circumstances if we have informed the purchaser thereof without delay.
4. Inasmuch as we are ourselves responsible for not having complied with deadlines and timelines that we have bindingly agreed to, or inasmuch as we are in arrears with performance, the purchaser shall be entitled to claim indemnification for delay to the amount of half a percent for each full week of delay, this however not to exceed five percent of the invoiced sum pertaining for such deliveries and performances as have been affected by said delay. Any claims in excess thereof are excluded, unless said delay is due, at the least, to gross negligence.
5. We are entitled to effect partial deliveries and partial performances at any time, unless the purchaser is not interested in such a partial delivery or partial performance.
6. Compliance with our obligation to deliver and to perform is subject to the purchaser fulfilling his own obligations in a timely and orderly manner.
7. In the event of the purchaser defaulting on acceptance, we are entitled to claim indemnification for any damage resulting therefrom. Effective from the time of default of acceptance, the risk of random deterioration and random destruction shall pass to the purchaser.
8. To the extent that the confirmation of order does not entail otherwise, delivery shall be effected ex works.

§ 5 RIGHTS OF PURCHASER IN THE EVENT OF DEFECTS

1. All products are to be delivered without manufacturing or material defects; the deadline for asserting claims relating to defects is set at one year after delivery of said products.
2. If the seller's operating or maintenance instructions are not complied with by the purchaser, or if changes are made to the products, or if parts are replaced, or expendable materials used, which do not comply with the original specifications, then all claims relating to product defects are void, unless the purchaser is able to disprove a duly substantiated assertion to the effect that said defect only resulted from one of the aforementioned circumstances.
3. In the event of a defect, we reserve the right to choose the mode of subsequent performance.
4. Liability for normal wear and tear is excluded.

5. Claims against the seller on grounds of defects may only be asserted by the purchaser proper and are non-transferable.

§ 6 LIABILITY FOR DAMAGES

1. Liability on our part for infringements of contractual obligations, or else arising from a delict, is restricted to malice aforethought and gross negligence. This shall not apply in the event of injuries to the purchaser's life and limb or health, nor shall it apply in the event of claims based on infringements of cardinal obligations as well as replacement in the event of damages resulting from delay (§ 286 German Civil Code). In this respect, we assume liability for guilt to whatever degree.
2. The aforementioned exclusion of liability pertains likewise to slightly negligent infringements by auxiliary persons in our service.
3. Inasmuch as liability for damages not deriving from injuries to the purchaser's life and limb or health has not been excluded for slight negligence, all claims in this particular expire after twelve months, this to be reckoned from the beginning of the time when the grounds for said claim eventuated or, in the event of claims for indemnification of damages on account of a defect, upon handover of the good in question.
4. Inasmuch as liability for indemnification towards us is excluded or restricted, this pertains also in respect of personal liability for indemnification on the part of our employees, personnel, staff, representatives, and auxiliary persons in our service.

§ 7 RETENTION OF TITLE

1. Pending payment of all debts (including all current account debts) incurred by the purchaser towards the seller, for whatever legal reason, whether now or in future, the seller will have deposited with him certain securities, which he will return upon request and at his discretion, on condition, however, that their value enduringly exceeds the value of the debt by more than 20%.
2. The goods remain the property of the seller. Processing is always effected on behalf of the seller in his capacity as manufacturer, however without any obligation for him. In the event that (joint) ownership by the seller expires as a result of the goods' installation, then it is now agreed that the purchaser's (joint) ownership of the unitary object is transferred to the seller in proportion to its value (amount of invoice). The purchaser will keep safe the jointly owned property free of charge. Goods that the seller is entitled to (joint) ownership of are designated hereinafter as goods under reservation.
3. The purchaser is entitled to process the goods under reservation in the regular course of business and to sell them, unless he is in arrears. Pledging and transfer by way of security are not permitted. Claims arising from resale or for any other legal reason (insurance, unlawful acts)

in respect of the goods under reservation (including all current account debts) are deemed to have already now been transferred in full as security to the seller by the purchaser. The seller revocably authorizes the purchaser to collect, in his own name, debts transferred to the seller on the seller's account. Such authorisation for collection can only be revoked if the seller does not meet his payment obligations in the proper form.

4. In the event that third parties obtain ownership of goods under reservation, especially in cases of distraint, the seller will draw attention to the purchaser's ownership rights and inform the latter thereof without delay, so as to let the purchaser avail himself of said ownership rights. Insofar as the third party is not able to reimburse the seller for legal or extralegal costs arising in this connection, the purchaser shall assume liability therefore.
5. In the event the purchaser infringes the contract – in particular, by falling into arrears – the seller is entitled to withdraw from the contract and to demand return of the goods under reservation.

§ 8 EXPIRY OF OWN CLAIMS

Contrary to what is stipulated in § 195 German Civil Code, claims for payment on our part shall expire after five years. The countdown to expiry commences as stipulated in § 199 German Civil Code.

§ 9 WRITTEN FORM MANDATORY

Legally valid statements and information due to us or to third parties from the customer must be set out in writing.

§ 10 PLACE OF PERFORMANCE – LEGAL SYSTEM – LEGAL VENUE

1. Unless the contract specifies otherwise, place of performance and payment shall be our business location.
2. For purposes of this contract, the law of the Federal Republic of Germany shall pertain; the applicability of UNO commercial law is excluded.
3. Insofar as the purchaser is a business man, a legal person under public law, or a separate estate under public law, the town of Stuttgart shall be the sole place of jurisdiction for all litigations arising directly or indirectly from this contractual relationship.
4. Should any provision in these general terms of business, or any provision forming part of other agreements, be or become invalid, this shall have no bearing on the validity of all and any other provisions or agreements concluded therein.
5. In the event that the English translation of any provision of the above GTB should deviate in its meaning from the German original text, then the latter shall apply.

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