



## General Terms and Conditions of Sale

### § 1 General Provisions – Scope of Application

- (1) Our terms and conditions of sale apply exclusively; we do not recognise any terms and conditions of the customer that conflict with or deviate from our terms and conditions of sale, unless we have expressly agreed in writing to their validity. Our terms and conditions of sale also apply if we carry out the delivery to the customer without reservation in full knowledge of the customer's terms and conditions that conflict with or deviate from our terms and conditions of sale.
- (2) All agreements made between us and the customer for the purpose of executing this contract are set out in writing in this contract.
- (3) Our terms and conditions of sale apply exclusively to entrepreneurs within the meaning of § 310 para. 1 of the German Civil Code (BGB).

### § 2 Offer – Offer Documents

- (1) If the order is to be qualified as an offer within the meaning of § 145 BGB, we may accept it within two weeks.
- (2) We reserve ownership and copyright in illustrations, drawings, calculations and other documents. This also applies to such written documents that are designated as "confidential". The customer requires our express written consent before passing them on to third parties.

### § 3 Prices – Terms of Payment

- (1) Unless otherwise stated in the order confirmation, our prices are ex works, excluding packaging; packaging will be invoiced separately.
- (2) The statutory value added tax is not included in our prices; it will be shown separately in the invoice at the statutory rate applicable on the date of invoicing.
- (3) A cash discount deduction requires a separate written agreement.
- (4) Unless otherwise stated in the order confirmation, the purchase price is due for payment net (without deduction) within 30 days of the invoice date. The statutory rules regarding the consequences of default in payment apply.
- (5) The customer is only entitled to set-off rights if its counterclaims have been finally determined by a court, are undisputed or have been acknowledged by us. Furthermore, the customer is entitled to exercise a right of retention only insofar as its counterclaim is based on the same contractual relationship.



## § 4 Delivery Period

- (1) The commencement of the delivery period stated by us is subject to the clarification of all technical questions.
- (2) Compliance with our delivery obligation further presupposes the timely and proper fulfilment of the customer's obligations. The plea of non-performance of the contract is reserved.
- (3) If the customer defaults on acceptance or culpably breaches other duties to cooperate, we are entitled to demand compensation for the damage incurred by us as a result, including any additional expenses. Further claims or rights are reserved.
- (4) If the conditions of para. (3) are met, the risk of accidental loss or accidental deterioration of the purchased item passes to the customer at the point in time at which the customer enters into default of acceptance or debtor's delay.
- (5) We are liable in accordance with the statutory provisions insofar as the underlying purchase agreement constitutes a fixed-date transaction within the meaning of § 323 para. 2 no. 2 BGB or § 376 HGB. We are also liable in accordance with the statutory provisions if, as a consequence of a delay in delivery for which we are responsible, the customer is entitled to assert that its interest in the further performance of the contract has ceased to exist.
- (6) We are further liable in accordance with the statutory provisions if the delay in delivery is based on an intentional or grossly negligent breach of contract for which we are responsible; fault on the part of our representatives or vicarious agents is attributable to us. If the delay in delivery is based on a grossly negligent breach of contract for which we are responsible, our liability for damages is limited to the foreseeable, typically occurring damage.
- (7) We are also liable in accordance with the statutory provisions insofar as the delay in delivery for which we are responsible is based on the culpable breach of a material contractual obligation; in this case, however, liability for damages is limited to the foreseeable, typically occurring damage.
- (8) Further statutory claims and rights of the customer are reserved.

## § 5 Transfer of Risk – Packaging Costs

- (1) Unless otherwise stated in the order confirmation, delivery ex works is agreed.
- (2) Separate agreements apply to the return of packaging.
- (3) If the customer so wishes, we will cover the delivery with transport insurance; the costs incurred in this respect shall be borne by the customer.



## **§ 6 Liability for Defects**

- (1) If the subject matter of the contract is listed in the annex to these terms and conditions of sale designated as "Quality Agreement", the parties agree on the properties of the respective object described therein. This does not constitute the assumption of a guarantee.
- (2) Claims for defects by the customer presuppose that the customer has properly fulfilled its duties of inspection and notification of defects owed pursuant to § 377 HGB.
- (3) Insofar as a defect in the purchased item exists, the customer is entitled at its option to demand subsequent performance in the form of rectification of the defect or delivery of a new defect-free item. In the event of rectification of the defect or replacement delivery, we are obliged to bear all expenses necessary for the purpose of subsequent performance, in particular transport, travel, labour and material costs, insofar as these are not increased by the fact that the purchased item has been taken to a place other than the place of performance.
- (4) Insofar as the customer has incurred expenses, in accordance with the nature of the purchased item and its respective contractual purpose, for removal and installation as well as for attaching the purchased item to another object within the scope of subsequent performance, we are obliged to reimburse the customer for the necessary expenses incurred in this respect. This applies, however, only if the defect was not yet apparent at that time or was not discovered due to the customer's gross negligence.
- (5) If subsequent performance fails, the customer is entitled at its option to demand withdrawal from the contract or a reduction of the purchase price.
- (6) The limitation period for claims for defects is 24 months, calculated from the transfer of risk. This does not apply insofar as the purchased item is typically used for a building structure and caused the defect.
- (7) The statutory rule regarding the limitation period in the case of a supplier's recourse pursuant to § 445b BGB remains unaffected.

## **§ 7 Assumption of Producer Liability**

- (1) We intend to create a channelling of liability for our customer to the effect that we become the addressee of liability for tortious liability cases of the manufacturer of the goods sold by us. For this purpose, we are liable to the customer pursuant to § 823 BGB if the customer has a claim against the manufacturer of the sold goods under the principles of producer liability. Excluded from this is liability in the case of intentional conduct by the manufacturer. No liability beyond the liability of the manufacturer arises as a result.
- (2) The assumption of liability under para. (1) is not intended to bring about any change in the burden of proof beyond the principles of established case law on producer liability.



## **§ 8 Limitation of Liability**

- (1) Claims for damages are, with the exception of claims under § 7 and breaches of material contractual obligations, limited to intent and gross negligence. In the case of negligent conduct, only foreseeable and typically occurring damages are to be compensated in any event. Liability for culpable injury to body, health and life remains unaffected.
- (2) The limitation under para. (1) also applies insofar as the customer demands reimbursement of futile expenditure instead of a claim for damages in lieu of performance.
- (3) Liability under the German Product Liability Act (ProdHaftG) remains unaffected.
- (4) Insofar as liability for damages on our part is excluded or limited, this also applies with regard to the personal liability for damages of our employees, workers, staff, representatives and vicarious agents.

## **§ 9 Retention of Title**

- (1) We retain title to the purchased item until receipt of all payments under the supply contract. In the event of conduct by the customer that is contrary to the contract, in particular in the event of default in payment, we are entitled to take back the purchased item. The taking back of the purchased item by us constitutes withdrawal from the contract. After taking back the purchased item, we are entitled to realise it; the proceeds of realisation shall be credited against the customer's liabilities – less reasonable costs of realisation.
- (2) The customer is obliged to handle the purchased item with care; in particular, it is obliged to insure it adequately at replacement value against fire, water and theft damage at its own expense. Insofar as maintenance and inspection work is required, the customer must carry this out in good time at its own expense.
- (3) In the event of seizure or other interventions by third parties, the customer must notify us immediately in writing so that we can bring an action pursuant to § 771 ZPO. Insofar as the third party is not in a position to reimburse us for the judicial and extrajudicial costs of an action pursuant to § 771 ZPO, the customer is liable for the loss and costs incurred by us.
- (4) The customer is entitled to resell the purchased item in the ordinary course of business; however, it hereby assigns to us all claims in the amount of the final invoice amount (including VAT) of our claim that accrue to it from the resale against its buyers or third parties, irrespective of whether the purchased item has been resold without or after processing. The customer remains authorised to collect this claim even after the assignment. Our authority to collect the claim ourselves remains unaffected. However, we undertake not to collect the claim as long as the customer meets its payment obligations from the collected proceeds, does not default on payment and in particular no application for the opening of composition or insolvency proceedings has been made or a cessation of payments exists. If, however, this is the case, we may demand that the customer discloses the assigned claims and their debtors to us, provides all information necessary



- for collection, hands over the associated documents and notifies the debtors (third parties) of the assignment.
- (5) The processing or transformation of the purchased item by the customer is always carried out on our behalf. If the purchased item is processed with other objects not belonging to us, we acquire co-ownership of the new object in proportion to the value of the purchased item (final invoice amount, including VAT) in relation to the other processed objects at the time of processing. The same provisions as for the purchased item delivered subject to retention of title otherwise apply to the object created through processing.
  - (6) If the purchased item is inseparably mixed with other objects not belonging to us, we acquire co-ownership of the new object in proportion to the value of the purchased item (final invoice amount, including VAT) in relation to the other mixed objects at the time of mixing. If the mixing takes place in such a way that the customer's object is to be regarded as the principal item, it is agreed that the customer transfers co-ownership to us on a pro rata basis. The customer shall keep the sole ownership or co-ownership thus created on our behalf.
  - (7) The customer also assigns to us the claims that arise against a third party through the connection of the purchased item with a property, for the purpose of securing our claims against it.
  - (8) We undertake to release the securities to which we are entitled at the customer's request insofar as the realisable value of our securities exceeds the claims to be secured by more than 10%; the selection of the securities to be released is incumbent upon us.

## **§ 10 Place of Jurisdiction – Place of Performance**

- (1) If the customer is a merchant, our registered place of business is the place of jurisdiction; however, we are also entitled to sue the customer at its local court.
- (2) The law of the Federal Republic of Germany applies.
- (3) Unless otherwise stated in the order confirmation, our registered place of business is the place of performance.