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## **General Terms and Conditions of Delivery and Order for Delivery to and Job Production for Customers**

### **1. Scope of Application**

Exclusively the following Terms and Conditions shall apply to the business relation with our customers and to any information and advice provided. Provided our General Terms and Conditions have been introduced to the transaction with the Customer, such shall also apply to all additional business relations between us and the Customer, unless agreed upon otherwise in writing. The Customer's terms and conditions shall only apply if and insofar as we expressly recognize such in writing. Our silence in response to such variant terms and conditions shall in particular not constitute an acknowledgement or approval, even with regard to future agreements. Our Terms and Conditions shall apply in lieu of any terms and conditions of purchase of the Customer, even if such terms and conditions of purchase stipulate that the acceptance of an order represents the unconditional acknowledgement of such terms and conditions of purchase. By accepting our order confirmation, the Customer expressly acknowledges that it waives its legal objections derived from the terms and conditions of purchase.

### **2. Information, Advice, Features of Goods**

- 2.1. Information and advice regarding our products and other performances shall be provided exclusively on the basis of our past experience. Any values indicated thereby are to be considered average values. All information regarding our products, particularly the illustrations, drawings, measurements and performance specifications as well as all other technical specifications contained in our offers and pamphlets shall be considered approximate values.
- 2.2. Any reference to standards, similar technical rules as well as technical specifications, descriptions and illustrations of the delivered product in offers and catalogues and our advertisements shall only represent the specification of a feature of our good provided we have expressly declared the quality to be a feature of the good; otherwise such shall be *non-binding*, general descriptions of performance.
- 2.3. Certain features or values shall in principle only be considered to have been warranted by us provided we expressly confirm such in writing. We shall only be considered to have assumed a warranty provided we have designated a feature or deliverable to be warranted in writing.

### **3. Samples; Trial Specimens; Models**

The features of trial specimens and models shall only form a component of this Agreement if expressly agreed upon in writing. We shall retain the title to samples, models and prototypes developed by us and such samples, models and prototypes may not be used nor made accessible to third parties without our written approval.

### **4. Conclusion of Agreement, Scope of Delivery, Acceptance**

- 4.1 Our offers shall be subject to change. They shall be invitations for orders. Even in the regular course of business, an agreement shall first come about after we have confirmed the Customer's order in writing. Our order confirmation shall be decisive

for the contents of the supply agreement. Our confirmation may be replaced by our invoice in the event of the immediate delivery or performance.

- 4.2 All agreements, collateral agreements, representations and modifications of agreements must be made in writing. This shall also apply to the waiver of this requirement for the written form.
- 4.3 In the event of call-up orders or delays in acceptance conditioned by the Customer, we shall be entitled to procure the material for the entire order and manufacture the entire order quantity immediately. No Customer requests for modification may thus be considered after the order has been issued, unless such are expressly agreed upon.
- 4.4 The Customer must inform us of any special requirements for our goods in writing in due time prior to the conclusion of the Agreement.
- 4.5 We shall be entitled to perform deliveries with up to 10% more or less quantity or weight than the ordered volume.
- 4.6 In the event the acceptance or shipment of the goods is delayed on grounds for which the Customer is responsible, we shall be entitled, at our choice, to demand the immediate payment of the purchase price or to rescind the Agreement or to refuse performance and to demand damage compensation in lieu of the entire performance after the establishment and expiration of a 14-day grace period. Such period must be set in writing. We do not need to refer again herein to the rights from this clause. In the event damage compensation is requested, the damage compensation to be rendered shall be at least 10% of the net delivery price. The right to furnish proof of a variant damage amount or of the non-occurrence of damage is hereby reserved.

## **5. Delivery, Delivery Period, Delay in Delivery**

- 5.1 Binding delivery dates and periods must be expressly agreed upon in writing. We shall make best efforts to observe non-binding or approximate delivery dates and periods.
- 5.2 Delivery and performance periods shall commence upon the receipt of our order confirmation by the Customer though not before the details of the performance of the order have been clarified and all other requirements to be performed by the Customer have been met; this shall also apply to delivery dates. In the event the Customer requests modifications after the order has been issued, a new delivery period shall start upon our confirmation of such modification.
- 5.3 Deliveries and performances prior to the expiration of the delivery or performance period shall be permissible. The date of the notice that the good is ready to be sent shall be considered the delivery date; otherwise, the delivery date shall be the date the good is shipped. We shall be entitled to make partial deliveries. Unless agreed upon otherwise in writing, the Customer shall only be considered to have lost interest in our performance if we fail to deliver or delay the delivery of material parts.
- 5.4 In the event we are in delay with delivery, the Customer must first establish a reasonable grace period for us of at least 12 days. In the event such period expires unproductively, the Customer may assert the rights stipulated in §§ 280, 281, 284, 286 and 323 of the Civil Code, subject to the conditions therein. Damage compen-

sation claims due to the breach of duty shall only exist, irrespective of the ground therefore, in accordance with the provision in No. 11 hereof. In the event we fail to render a performance on a date specified in the Agreement or not within a period stipulated in the Agreement, the Customer may only rescind the Agreement provided the Customer has linked in the Agreement its interest in the performance to the timeliness thereof.

- 5.5 We shall not be in default as long as the Customer is in default with the performance of obligations towards us, including those from other agreements.

## **6. Reservation of Right to Self-Supply; Force Majeure and Other Hindrances**

- 6.1 We shall inform our customers in the event we fail to receive, receive correctly or receive in due time a delivery or performance from our subcontractors on grounds for which we are not responsible or in the event of *force majeure*. In such event we shall be entitled to postpone the delivery or performance for the duration of the hindrance or to rescind the Agreement in whole or in part due to the portion of the Agreement which has not yet been performed, provided we have fulfilled our above-mentioned duty to provide information. *Force majeure* shall be equated with strikes, lockouts, official intervention, shortages of energy or raw material, bottlenecks in transport through no fault of our own, operational hindrances through no fault of our own (e.g., due to fire, water and damage to machinery) and all other hindrances which were objectively not caused by our negligence.

- 6.2 In the event a delivery or performance date or delivery period has been bindingly agreed upon and in the event the agreed delivery or performance date or delivery period is exceeded by more than four weeks due to events in accordance with No. 6.1 above, the Customer shall exclusively be entitled to rescind the Agreement due to the portion thereof which has not yet been performed.

## **7. Shipping and Passage of Risk**

- 7.1 Unless agreed upon otherwise in writing, we shall ship goods uninsured at the risk and expense of the Customer. We hereby reserve the right to select the route and means of transport.
- 7.2 The risk of accidental loss or deterioration shall pass to the Customer upon the delivery of the goods to be supplied to the Customer, the transport company, carrier or other company specified for the shipment, though, at the latest, when the goods leave our plant, warehouse or branch office.
- 7.3 In the event the shipment is delayed because we assert our retention right as a result of the Customer's complete or partial default in payment or due to any other reason for which the Customer is responsible, the risk shall pass to the Customer no later than the date of the notice that the good is ready to be sent.

## **8. Breaches of Duty; Warranties**

- 8.1 The Customer must notify us in writing of recognizable defects without delay, though no later than 12 days after performances are rendered—even in the event the Customer can use part of the performance. Defects recognizable upon delivery must additionally be notified to the transport company and the Customer must have the transport company record such defects. Notices of defects must contain a description of the defect in as much detail as possible. A notice of defect not pre-

sented in due time shall exclude any claim of the Customer to a warranty. In the event insufficient quantities or weights were already recognizable upon delivery in accordance with the above inspection duties, the Customer must complain about such deficiencies to the transport company upon receiving the goods and have such complaint confirmed; otherwise our duty to answer for the deficiencies shall no longer be applicable.

- 8.2. Before the customer asserts any further rights, we must be warned of any other breaches of duty in writing without delay with the establishment of a reasonable period to remedy the defects.
- 8.3. In the event we are responsible for a defect, we shall, at our choice, remedy such free of charge either through subsequent improvement or a replacement delivery, whereby we shall generally be entitled to two attempts at subsequent performance. We shall remedy defects for which the Customer is responsible; we shall also remedy unjustified complaints as ordered by and at the expense of the Customer, provided the Customer is a merchant entered in the commercial register.
- 8.4. In the event
  - the subsequent performance fails; subsequent performance cannot be expected; subsequent performance is refused;
  - the performance is not rendered within a contractually agreed period in which the Customer contractually linked the continued existence of its interest in performance to the timeliness thereof;
  - or special circumstances exist which, when the interests of both Parties are weighed, justify the immediate assertion of the rights listed below,

the Customer may, subject to the conditions provided by law, demand the reduction of the compensation or general rescission of the Agreement and damage compensation or reimbursement of expenses. In the event the breach of duty does not relate to a work performance on our part by exception, rescission shall be excluded as long as our breach of duty is insubstantial. Except in the event we are liable for the defects, rescission shall likewise be excluded if we are not responsible for the breach of duty.

- 8.5. Unless expressly agreed upon otherwise or in an instance of § 478 of the Civil Code (claim to recourse), we hereby offer a warranty for verifiable material, production or design defects over a period of one year calculated from the commencement date of the period prescribed by law for the limitation of claims. We hereby likewise offer a warranty for job production over a period of one year from the commencement of the legal period of limitation. The above limitation period shall also apply to concurrent claims due to tortious action as well as to any claims from consequential damage due to defects.
- 8.6. Any additional claims of the Customer due to or in connection with defects or consequential damage due to defects, irrespective of the ground therefore, shall only exist in accordance with the provision in No. 11 provided such are not damage compensation claims from a warranted feature or guaranty which is to intended to

protect the Customer against the risk of any consequential damage due to defects. In such event, we shall also only be liable for typical and foreseeable damage.

- 8.7. Our warranty and liability shall be excluded unless defects and related damage are verifiably based on defective material, design or performance or assembly instructions. In particular, our warranty and liability shall be excluded for the consequences of faulty use (particularly in the event of assembly not in accordance with the state of engineering or assembly contrary to the assembly instructions) or wear and tear of the goods, excessive use or unsuitable equipment as well as the consequences of chemical or electrolytic influences which do not correspond to the foreseen, average standard influences. Our liability in accordance with No. 11 shall not be prejudiced hereby.

## **9. Prices; Terms and Conditions of Payment; Defense of Uncertainty**

- 9.1 All prices shall in principle be in euros and shall not include packaging, freight and any minimum quantity surcharge ex works or warehouse plus the value-added tax applicable to the Customer.
- 9.2. Any performances which do not form an integral component of the agreed scope of delivery shall be rendered on the basis of our valid general price lists, unless agreed otherwise.
- 9.3 We shall be entitled to unilaterally and appropriately increase the compensation (§ 315 of the Civil Code) in the event of an increase in material procurement costs, wage and ancillary wage costs as well as energy costs and costs for environmental requirements, provided more than four months transpire between the conclusion of the Agreement and the delivery.
- 9.4 Unless otherwise agreed in individual cases, our invoices shall be payable 30 days after date of invoice. Unless otherwise agreed in individual cases the customer shall be entitled to a 2% discount if and insofar as payment is received on our account within 14 days and provided the customer is not in arrears with the payment of other invoices.
- 9.5. The customer shall also fall into arrears over payment after 30 days after date of invoice without a reminder.
- 9.6. Default interest of 8% above the respective base interest rate shall be calculated upon the occurrence of the default. The date we receive the money or it is credited to our account shall be considered the date of payment. We hereby reserve the right to assert any additional damage.
- 9.7 In the event payment conditions are not observed or circumstances become known or recognizable which allow justified doubt about the creditworthiness of the Customer to arise in accordance with our due commercial discretion, including those facts which already existed upon the conclusion of this Agreement, though of which we were not aware or did not have to be aware, we shall in such event be entitled without prejudice to any further legal rights to suspend further work on current orders or the delivery thereof and to demand advance payments or the provision of acceptable collateral for still outstanding deliveries or performances and to rescind the Agreement after the unsuccessful expiration of a reasonable grace period for the provision of such collateral, without prejudice to any further rights pro-

vided by law. The Customer shall be obligated to compensate any damage we incur through the non-performance of this Agreement.

- 9.8 The Customer shall only have a retention right or right to setoff with regard to those counterclaims which are uncontested or have been recognized by non-appealable decision.
- 9.9 We shall only accept bills of exchange offered as an exception by way of express agreement and only on account of performance. We shall calculate discount charges from the due date of the invoice until the maturity date of the bill of exchange as well as costs for the bill of exchange. The Customer must bear interest and the costs for the discounting or redemption of bills of exchange. With regard to bills of exchange and cheques, the date of the redemption shall be considered to be the payment date. In the event our company's bank refuses to discount a bill of exchange or in the event of reasonable doubt that a bill of exchange will be discounted during the term of the bill of exchange, we shall be entitled to demand immediate payment in cash while taking back the bill of exchange.

## **10. Retention of Title**

- 10.1 We hereby reserve the title to all equipment and goods we deliver (hereinafter, the "Reserved Good"), until all our claims from the business relation with customers, including any claims arising in the future from agreements concluded at a later date, are satisfied. This shall also apply to any balance in our favor, provided we include some or all claims in a running invoice (current account) and the balance is drawn.
- 10.2 The Customer must sufficiently insure the Reserved Good against fire and theft. Any claims against the insurance from a damage event affecting the Reserved Good are hereby assigned to us in advance in the value of the Reserved Good.
- 10.3 The Customer shall be entitled to resell the delivered good in the normal course of business. The Customer shall not be permitted to dispose of the good in another fashion; in particular, the Customer may not pledge the Reserved Good or grant equitable liens thereupon. In the event the Reserved Good is not paid immediately by the third-party buyer upon the resale, the Customer shall be obligated to only resell the good subject to a retention of title. The authorization to resell the Reserved Good shall readily lapse in the event the Customer suspends payments or is in default with a payment to us.
- 10.4 The Customer hereby assigns us in advance all claims (including collateral and ancillary rights) which arise against the final buyer or third parties from or in connection with the resale of Reserved Good. The Customer may not conclude any agreement with its customers which excludes or jeopardizes our rights in any fashion or void the advance assignment of the claim. In the event of the sale of Reserved Good with other objects, the claim vis-à-vis the third-party buyer shall be considered to be assigned in the amount of the delivery price agreed upon between us and the Customer, unless amounts attributable to the individual goods can be determined from the invoice.
- 10.5 The Customer shall remain entitled to collect the good it assigned to us until we revoke such right, which we may do at any time. The Customer shall be obligated to provide us any information and documents necessary to collect the assigned

claims at our request and to inform its customers of the assignment to us immediately, unless we inform them ourselves.

- 10.6 In the event the Customer adds claims from the resale of Reserved Goods to an existing current account relation with its customers, the Customer hereby assigns any final balance resulting in its favor to us in advance in the total amount of the claim added to the current account relation from the resale of our Reserved Good.
- 10.7 The Customer must inform us immediately in the event the Customer has already assigned claims from the resale of the good we delivered or to be delivered by us to a third party, particularly on the basis of proper or improper factoring or concluded agreements on the basis of which our current or future security interest pursuant to this No. 10 could be jeopardized. In the event of improper factoring, we shall be entitled to rescind this Agreement and demand the surrender of previously delivered goods; this shall also apply in the case of proper factoring in the event the Customer cannot freely dispose of the purchase price in accordance with the agreement with the factor.
- 10.8 In the event of conduct in breach of contract, particularly in the event of default in payment, we shall be entitled to take back all Reserved Goods without having to rescind the Agreement in advance; in such event, the Customer shall be obligated to surrender the goods. We may access the business premises of the Customer at any time during normal business hours in order to determine the inventory of the goods we have delivered. The taking back of the Reserved Good shall only constitute the rescission of the Agreement if we expressly declare such in writing or mandatory legal provisions provide for this. The Customer must inform us immediately in writing of any third-party access to the Reserved Good or claim assigned to us.
- 10.9 In the event the value of the collateral existing for us in accordance with the above provisions exceeds the secured claims by a total of more than 10%, we shall be obligated to release collateral of our choice to such degree at the Customer's request.

## **11. Exclusion and Limitation of Liability**

- 11.1 We shall be unlimitedly liable for our own intentional or grossly negligent breach of duty or the intentional or grossly negligent breach of duty of our legal representatives or vicarious agents or for the breach of material contractual duties and in the event of impossibility for which we are responsible and substantial breach of duty.  
  
We shall furthermore be unlimitedly liable in the event of loss of life, bodily injury and illness, even when caused by our legal representatives or vicarious agents. This shall also apply insofar as we assume a warranty for the quality of our good or the presence of a deliverable and in the event of liability in accordance with the Product Liability Act.
- 11.2. In the event we are not liable in accordance with No. 11.1 above, we shall not be liable in the case of slight negligence for any damage compensation claims from the current contractual relation directed against us due to the negligent breach of duty, irrespective of the legal ground.
- 11.3. In the event of the above liability in accordance with No. 11.2 and liability without fault, in particular in the event of initial impossibility and legal defects, we shall only be liable for typical and foreseeable damage.

- 11.4. We shall only be liable from the assumption of a procurement risk provided we have expressly assumed the procurement risk by way of a written agreement.
- 11.5. Liability for indirect damage and consequential damage due to defects shall be excluded hereby unless we breach an essential contractual duty or we, our executives or vicarious agents are accused of an intentional or grossly negligent breach of duty.
- 11.6. Any additional liability shall be excluded hereby.
- 11.7. The exclusions and/or limitations of liability pursuant to Nos. 11.2 through 11.5 above shall apply to the same extent in favor of executive and non-executive employees and other vicarious agents as well as our subcontractors.
- 11.8. The Customer's claims to damage compensation from this contractual relation may only be asserted within an exclusionary period of one year as of the commencement of the legal period of limitation.

## **12. Job Production**

- 12.1. The Customer must provide us the specifications necessary to process the work pieces. We shall no longer be liable in the event of incorrect specifications.
- 12.2. In the event of missing or incomplete specifications, we shall process the work pieces at our discretion, without an obligation to inspect the material provided to us in advance. In the event of incorrect or incomplete specifications, the Customer shall bear the damage to our tools, machinery and equipment.
- 12.3. Work pieces to be processed are to be delivered or picked up at our premises or the delivery/pickup location specified in our offer free of charge.

## **13. Place of Performance; Place of Jurisdiction; Applicable Law**

- 13.1. The place of performance for all contractual obligations shall be the registered office of our company. As permitted by law, Krefeld shall be the exclusive place of jurisdiction for all disputes. We shall, however, be entitled to take action against the Customer at its general place of jurisdiction.
- 13.2. Exclusively the law of the Federal Republic of Germany shall apply to all legal relations between us and the Customer, to the exclusion of the UN Sales Convention.

## **14. Severability**

- 14.1. Any modifications of these General Terms and Conditions of business shall be notified to the Customer in writing. Such Terms and Conditions shall be considered to have been approved by the Customer unless the Customer objects hereto in writing in due time. We must specifically refer to this legal consequence in our modification notice. The Customer must send its objection to us within six weeks after receiving a modification notice.
- 14. In the event any provisions of this Agreement are invalid, the residual provisions hereof shall remain fully valid. In lieu of any invalid provision, that provision which,



as permitted by law, most closely approximates the invalid provision shall readily apply.

**Note**

Pursuant to the provisions of the Federal Data Protection Act, we hereby point out that our accounting is done electronically and that we store the customer data received on the basis of the business relation in this regard.

Willich, September 2016

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