

SECTION 1 GENERAL SCOPE OF APPLICATION

1. Our Terms and Conditions of Business shall apply exclusively. We shall not recognise terms and conditions of the customer that conflict with or deviate from our Terms and Conditions of Business, unless we have given our express written consent to their application. Our Terms and Conditions of Business shall apply even if we unreservedly provide the delivery or service to the customer despite knowing of terms and conditions of the customer that conflict with or deviate from our Terms and Conditions of Business.
2. All agreements made between us and the customer for the purpose of implementing this contract have been laid down in writing in this contract.
3. Our Terms and Conditions of Business shall apply only in relation to business owners as defined by Section 310 (1) *BGB* [German Civil Code].

SECTION 2 OFFER - OFFER DOCUMENTS

1. If the purchase order is to be classified as an offer under Section 145 *BGB*, we shall have 2 weeks within which to accept it.
2. We shall retain rights of title and copyrights to illustrations, drawings, calculations and other documents. This shall also apply to written documents designated "confidential". The customer shall require our express written consent prior to passing on such documents to third parties.
3. Framework agreements shall have a term of 12 months, unless otherwise agreed upon.

SECTION 3 PRICES, PAYMENT TERMS

1. Unless otherwise ensues from our acknowledgement of the order, our prices shall apply "ex works", and shall exclude packaging; packaging shall be invoiced separately.
2. Our prices shall not include value-added tax; value-added tax shall be shown separately in the invoice at the statutory rate valid on the day of invoicing.
3. The deduction of a cash discount shall require special written agreement. Unless otherwise ensues from our acknowledgement of the order, the purchase price shall be due and payable net (without any deduction) within 30 days of the invoice date. Acceptance of bills of exchange received as payment shall be subject to the reimbursement of expenses. Bills of exchange and bills of acceptance with a term longer than three months shall not be accepted. The statutory rules regarding the consequences of default in payment shall apply.
4. The customer shall be entitled to rights of set-off only if its counter-claims have been determined by a final and non-appealable court judgement, are undisputed or have been accepted by us. Additionally, the customer shall be authorised to exercise a right of retention only insofar as its counter-claim is based on the same contractual relationship.

SECTION 4 DELIVERY PERIOD

1. A prerequisite for the commencement of the delivery period specified by us is that all technical issues must have been cleared up.
2. Furthermore, a prerequisite for compliance with our obligation to deliver is that the customer must have performed its obligation properly and in due time. The defence of non-performance of the contract shall remain reserved.
3. If the customer defaults on taking delivery or culpably breaches any other duties to cooperate, we shall be entitled to demand compensation for the loss incurred upon us as a result thereof, including any extra expenditure. Further claims or rights shall remain reserved.
4. Insofar as the prerequisites under subsection (3) have been met, the risk of accidental destruction or accidental deterioration of the item purchased shall pass to the customer at such time as the customer defaults on taking delivery or making payment.
5. We shall be liable in accordance with the statutory provisions insofar as the underlying contract is a transaction where time is of the essence as defined by Section 286 (2), No. 4 *BGB* or Section 376 *HGB* [German Commercial Code]. We shall also be liable in accordance with the statutory provisions insofar as the customer is, as a consequence of default in delivery for which we are at fault, entitled to claim that it is no longer interested in the further performance of the contract.
6. Furthermore, we shall be liable in accordance with the statutory provisions insofar as default in delivery is due to any intentional or grossly negligent breach of contract for which we are at fault; fault on the part of our representatives or authorised agents shall be attributable to us. Unless default in delivery is due to any grossly negligent breach of contract for which we are at fault, our liability to compensate for loss shall be limited to the foreseeable loss typically occurring.
7. We shall also be liable in accordance with the statutory provisions insofar as default in delivery for which we are at fault is due to any culpable breach of a duty material to the contract. In such case, however, our liability to compensate for loss shall be limited to the foreseeable loss typically occurring.
8. In all other respects, we shall, in cases of default in delivery, be liable up to a maximum of 5 % of the delivery value.

SECTION 5 PASSAGE OF RISK

1. Unless otherwise ensues from our acknowledgement of the order, delivery "ex works" shall be deemed agreed upon. We shall take out transportation insurance for the delivery, insofar as the customer so requests; the costs arising in this respect shall be borne by the customer.
2. Any return of packaging shall be agreed upon separately, if need be.

SECTION 6 LIABILITY FOR DEFECTS

1. A prerequisite for defect-related claims of the customer is that the customer must have properly met its obligations to inspect the goods and give notification of defects in accordance with Section 377 *HGB*.
2. Insofar as the item purchased or service rendered is defective, we may, at our option, render supplementary performance by rectifying the defect or delivering a new defect-free item. In cases of defect rectification or delivery of a replacement, we shall, up to a sum not exceeding the purchase price, bear all expenditure necessary for rendering supplementary performance, particularly transportation costs, transport infrastructure charges, labour costs and costs of material, except where these costs have risen as a result of the purchased item having been taken to a place other than the place of performance.
3. If supplementary performance fails, the customer may, at its option, demand rescission of the contract or reduction of the purchase price.
4. We shall be liable in accordance with the statutory provisions insofar as the customer asserts damage claims due to wrongful intent or gross negligence, including wrongful intent or gross

negligence on the part of our representatives or authorised agents. Except where we are at fault due to any intentional breach of contract, our liability to compensate for loss shall be limited to the foreseeable loss typically occurring.

5. We shall be liable in accordance with the statutory provisions insofar as we culpably breach a duty material to the contract. However, our liability to compensate for loss shall, also in this case, be limited to the foreseeable loss typically occurring.
6. Liability for culpable mortal injury, physical harm or health damage shall remain unaffected; this shall also apply to mandatory liability under the *Produkthaftungsgesetz* [Product Liability Act].
7. Except where otherwise provided for above, liability shall be excluded.
8. The limitation period for defect-related claims shall be 12 months, calculated from the time of passage of risk. This shall not apply insofar as the item purchased is normally used for a building structure and has caused the defect concerned. The limitation period in cases of supplier recourse under Sections 478 and 479 *BGB* shall remain unaffected; it shall be five years from the time when the defective item was delivered.

SECTION 7 JOINT LIABILITY

1. Liability to compensate for loss beyond that provided for under Section 6 shall, regardless of the legal nature of the claim asserted, be excluded. This shall particularly apply to damage claims based on culpa in contrahendo, other breaches of duty or tort claims to compensation for property damage under Section 823 *BGB*.
2. The limitation under subsection 1 shall also apply in cases where, instead of claiming compensation for loss in lieu of performance, the customer demands that expenditure incurred in vain be reimbursed.
3. Insofar as our liability to compensate for loss is excluded or limited, this shall also apply in respect of the personal liability of our employees, workers, personnel, representatives and authorised agents.

SECTION 8 RETENTION OF TITLE

1. We shall retain title to the purchased item until all payments arising from the business relationship with the customer have been received; this retention of title shall also relate to any recognised balance within an open account relationship. If the customer acts in breach of the contract, particularly by defaulting on payment, we shall be entitled to repossess the item purchased. Our repossession of the item purchased shall constitute rescission of the contract, if we expressly declare so. After the item purchased has been repossessed, we shall be authorised to realise this item. The proceeds from realisation shall be credited against the amounts owed by the customer, less the cost of realisation.
2. The customer shall treat the purchased item with care. In particular, it shall, at its own expense, adequately insure it against fire damage, water damage and theft on a replacement value basis. The customer hereby assigns to the seller, in the sum of the invoiced value of the goods (including value-added tax), the compensation claims to which it is entitled from claims of the aforementioned kind against insurance companies or other parties liable for damages. We hereby accept this assignment. Insofar as servicing and inspection work is necessary, the customer shall carry out this work in due time at its own expense.
3. If the item under retention of title is attached or otherwise seized by a third party, the customer shall promptly notify us in writing in order to enable us to bring an action in accordance with Section 771 *ZPO* [Code of Civil Procedure]. Insofar as such third party is unable to reimburse us for the court and out-of-court costs in connection with such action brought under Section 771 *ZPO*, the customer shall be liable for the loss incurred upon us.
4. The customer shall be entitled to on-sell the purchased item in the ordinary course of business. However, the customer hereby assigns to us now, in the sum of the final invoiced amount of our claim (including value-added tax), all claims - including any balance claims - accruing to it against its customers or third parties from such on-selling, regardless of whether the item purchased has been on-sold without having been processed or after having been processed. The customer shall remain authorised to collect this claim even after it has been assigned. Our right to collect the claim ourselves shall remain unaffected hereby. However, we shall not collect the claim ourselves as long as the customer meets its payments out of the proceeds received, has not defaulted on payment and, in particular, no petition for the commencement of composition or insolvency proceedings has been filed and no payments have been suspended. If this is the case, however, we may demand that the customer inform us of the claims assigned and the debtors concerned, provide all information necessary for collecting the claims, hand over all relevant documents and give the debtors (third parties) notification of this assignment.

5. Any processing or remodelling of the purchased item by the customer shall always be undertaken on our behalf. If the item purchased is processed with other items not belonging to us, we shall acquire joint title to the new item in the ratio of the value of the purchased item (final invoiced amount including value-added tax) to the value of the other processed items at the time of processing. In all other respects, the terms applicable to the purchased item delivered under retention of title shall equally apply to the item arising from such processing.
6. If the purchased item is inseparably mixed with other items not belonging to us, we shall acquire joint title to the new item in the ratio of the value of the purchased item (final invoiced amount including value-added tax) to the value of the other mixed items at the time of mixing. If mixing occurs in such a manner that the customer's item is to be regarded as the main item, it shall be deemed agreed that joint title be transferred to us by the customer on a pro-rata basis. The customer shall hold in safekeeping for us the solely or jointly owned property resulting therefrom.
7. If the customer sells the claim concerned in the course of genuine factoring, the customer shall assign to us the claim against the factor that takes the place of the claim sold to the factor, and shall pass on to us its sales proceeds on a pro-rata basis commensurate with the value of our rights in the goods.

8. At the customer's request, we shall release the collateral to which we are entitled, insofar as the realisable value of our collateral exceeds by more than 10% the claims to be secured; we shall be responsible for selecting the collateral to be released.

SECTION 9 PLACE OF JURISDICTION, PLACE OF PERFORMANCE

1. If the customer is a merchant, Wuppertal shall be the place of jurisdiction. However, we shall be entitled to also bring an action against the customer at the court in the place where the customer's registered office is situated.
2. Unless otherwise ensues from our acknowledgement of the order, Wuppertal shall likewise be the place of performance for all services arising from the contract.
3. The laws of the Federal Republic of Germany shall exclusively apply. The application of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 is hereby excluded.
4. In cases of doubt, the German wording of the General Terms and Conditions of Business shall apply.