

# General Terms and Conditions

of Payment and Delivery – B2B – as of 04/2021

## §1 General

The following conditions apply to all our offers, sales, deliveries, and services and form part of the contract. They do not apply if our contractual partner is a private individual acting outside their trade or profession. These conditions also apply to all future business relationships, even if not expressly agreed upon again. We expressly reject any conflicting or additional general terms and conditions of the buyer. They also do not apply if the buyer has based them on their order or any other declaration.

## §2 Offers and Orders

Our offers are non-binding unless expressly indicated as binding in writing. A valid contract is only formed upon our order confirmation or the delivery of the goods. Dimensional specifications, weights, illustrations, drawings, and other documents that are part of our non-binding offers remain our property and are only approximately authoritative. They may become binding contractual content only upon our express written confirmation.

## §3 Doubtful Solvency

If circumstances arise after the conclusion of the contract that raise doubts about the buyer's solvency, we may make further deliveries dependent on advance payment by the buyer. We may set a reasonable deadline for the buyer to make the advance payment and withdraw from the contract if the advance payment is not received by us by the deadline; the buyer may provide security by bank guarantee instead of making the advance payment. If we have already delivered the goods, the purchase price becomes due immediately regardless of agreed payment terms.

Doubts about the buyer's solvency exist, among other things, if an application for the opening of insolvency proceedings has been filed over their assets or if they fail to make payments to us or third parties on time.

#### §4 Prices

Our prices are "ex works" unless otherwise agreed with the buyer. Packaging costs are not included in the price. The statutory value-added tax is not included in our prices and will be separately stated on the invoice at the legally applicable rate on the day of invoicing. If more than 4 months elapse between the date of contract conclusion and the date of delivery without this being due to a delivery delay attributable to us, and if our valid price list has changed during this time, we may demand the list price valid on the day of delivery instead of the agreed purchase price. We will transmit a correspondingly amended order confirmation to the buyer before delivery. In this case, the buyer can withdraw from the order with respect to the goods for which the price has been increased. The buyer must declare the withdrawal in writing no later than the seventh working day after receipt of the amended order confirmation:

- Transmission by email is sufficient.
- Transmission by fax is not sufficient.

#### §5 Delivery Time

All stated delivery dates are non-binding and are considered only approximately agreed unless expressly designated as binding by us. In the

case of non-binding delivery dates, delivery within 15 working days after the specified delivery time is always considered timely. If we are unable to meet an expressly agreed deadline for reasons attributable to us or for other reasons, the buyer must grant us a reasonable grace period, which begins upon expiry of the 15 working days. After fruitless expiry of this grace period, the buyer is entitled to withdraw from the contract. If performance becomes temporarily impossible or significantly more difficult for us due to force majeure or other extraordinary and unforeseen circumstances, the agreed delivery time will be extended by the duration of the impediment to performance. The same applies to a statutory or buyer-set deadline for performance, especially for grace periods in the event of default. Before the expiry of the delivery time or performance period extended in accordance with paragraph 3, the buyer is neither entitled to withdraw nor to claim damages. If the impediment to performance lasts longer than 8 weeks, both the buyer and we are entitled to withdraw from the contract, provided that the contract has not yet been fulfilled. If the buyer is entitled to withdraw from the contract without setting a grace period, either contractually or legally (e.g., due to loss of interest), this right remains unaffected.

In the event of any delay in delivery, unless it is due to intent or gross negligence, all claims for damages are excluded.

### **§6 Shipment**

Shipment is at the buyer's expense. The risk passes to the buyer upon loading of the goods, even if free delivery or shipment with our own vehicles has been agreed upon. We are not obligated to arrange for transport insurance. Unless expressly agreed otherwise in writing, we are entitled to make partial deliveries to a reasonable extent, which will be invoiced separately.

### **§7 Payment**

Our invoices are to be paid within 14 days from the date of the invoice without deduction, in accordance with our offer, order, and invoice documents. If not stated otherwise in writing, invoices are payable within 14 days from the date of the invoice. The buyer is in default without a reminder

from us if they do not pay the purchase price within 10 days after it becomes due and after receiving the invoice or an equivalent payment statement.

If the buyer defaults on a payment, all their payment obligations arising from the business relationship with us, including those for which bills of exchange have been given, become due immediately. In this case, we are entitled to demand interest from the relevant time at the statutory rate. We reserve the right to prove higher damages. Bills of exchange are accepted only by prior agreement and, if discountable, without granting a discount. Payments by check or bill of exchange are also accepted only for the purpose of fulfillment. The purchase price claim is extinguished only after the complete redemption of the bill of exchange. Bills of exchange and discount charges are invoiced separately and are payable without deduction immediately.

The buyer is only entitled to set-off, even if notices of defects or counterclaims are asserted, if the counterclaims have been legally established, acknowledged by us, or are undisputed. The buyer is only entitled to exercise a right of retention if their counterclaim is based on the same purchase contract.

### §8 Warranty/Liability

The buyer must inspect the received goods for completeness, transport damage, obvious defects, quality, and characteristics. Obvious defects must be reported to us in writing within 2 weeks of the delivery of the contractual object.

We are not obligated to provide warranty if the buyer has not timely and properly reported an obvious defect. If there is a defect in the goods for which we are responsible and if it has been properly reported by the buyer, we are – excluding the buyer's rights to withdraw from the contract or reduce the purchase price – obligated to provide subsequent performance, unless we are entitled to refuse subsequent performance under statutory regulations. The buyer must grant us a reasonable period for subsequent performance for each individual defect.

The buyer may choose between defect rectification or delivery of new goods for subsequent performance. We are entitled to refuse the type of subsequent performance chosen by the buyer if it is associated with disproportionate costs. During subsequent performance, the reduction of the purchase price or the withdrawal from the contract by the buyer is excluded. A rectification is deemed to have failed after the second unsuccessful attempt. If subsequent performance has failed or if we have completely refused subsequent performance, the buyer may, at their option, demand a reduction in the purchase price (reduction) or withdraw from the contract.

The buyer may only assert claims for damages under the following conditions if subsequent performance has failed or if subsequent performance has been refused by us. The buyer's right to assert further claims for damages under the following conditions remains unaffected.

We are liable without limitation for intent or gross negligence and

for damages resulting from injury to life, body, or health caused by a negligent breach of duty by us or an intentional or negligent breach of duty by one of our legal representatives or vicarious agents, as well as for damages that are covered by the liability under the German Product Liability Act. Furthermore, we are liable without limitation for damages that are covered by a warranty issued by us, as well as for damages that we have fraudulently concealed.

We are also liable for damages caused by a simple negligent breach of essential contractual obligations by us or one of our legal representatives or vicarious agents. Essential contractual obligations are obligations whose fulfillment is essential for the proper execution of the contract and on whose compliance the contractual partner regularly relies and may rely. However, in this case, our liability is limited to the typically foreseeable damage.

Otherwise, our liability for damages is excluded. In particular, we are not liable for damages that have not occurred to the delivery item itself; furthermore, we are not liable for lost profits or other financial losses of the buyer.

The limitations of liability according to paragraphs 1 to 4 also apply to other claims, in particular to tort claims or claims for reimbursement of futile expenses instead of performance, in addition to the claim for damages instead of performance.

Any further liability for damages than that provided for in paragraphs 1 to 5 is excluded without consideration of the legal nature of the asserted claim; this applies in particular to claims for damages arising from culpa in contrahendo, other breaches of duty, or tortious claims for compensation for property damage under Section 823 of the German Civil Code.

To the extent that our liability for damages is excluded or limited, this also applies to the personal liability for damages of our employees, workers, staff, representatives, and vicarious agents.

The buyer's claims for damages, based on the defect, lapse upon expiry of the limitation period applicable to the buyer's warranty claims for the defect.

### §9 Reservation of Title

We reserve title to the delivered goods until receipt of all payments from the business relationship with the buyer. If the buyer breaches the contract, in particular by defaulting on payment, we are entitled to take back the delivered goods. Taking back the goods by us does not constitute withdrawal from the contract unless we have expressly declared this in writing. In the event of attachment or other interventions by third parties, the buyer must inform us immediately in writing so that we can file a lawsuit in accordance with Section 771 of the German Code of Civil Procedure (ZPO). If the third party is not able to reimburse us for the judicial and extrajudicial costs of a lawsuit in accordance with Section 771 of the German Code of Civil Procedure (ZPO), the buyer is liable for the loss incurred by us.

The buyer is entitled to resell the goods subject to retention of title in the ordinary course of business. The buyer hereby assigns to us all claims against their customers arising from the resale of the goods subject to retention of title in the amount of the agreed final invoice amount (including

value-added tax). This assignment applies regardless of whether the goods subject to retention of title are resold without or after processing. The buyer remains authorized to collect the claims even after the assignment. Our authority to collect the claims ourselves remains unaffected. However, we undertake not to collect the claims as long as the buyer meets their payment obligations from the proceeds collected, does not default on payment, and, in particular, no application for the opening of insolvency proceedings has been filed or payments have been suspended. However, if this is the case, we can demand that the buyer informs us of the assigned claims and their debtors, provides all information necessary for collection, hands over the associated documents, and informs the debtors (third parties) of the assignment.

Any processing or transformation of the goods by the buyer is always carried out for us. If the goods subject to retention of title are processed with other items not belonging to us, we acquire co-ownership of the new item in the ratio of the objective value of our goods subject to retention of title to the other processed items at the time of processing. The same applies if the goods subject to retention of title are mixed with other items not belonging to us.

If the buyer acquires sole ownership of the new item, the parties agree that the buyer grants us co-ownership of the new item in the ratio of the objective value of the goods subject to retention of title and processes the new item free of charge for us. The same applies if the buyer acquires sole ownership of the new item through processing, mixing, or connection.

The buyer must store the goods subject to retention of title at their own expense and insure them adequately at replacement value against fire, water, and theft damage. The buyer hereby assigns to us any claims for compensation under the insurance contracts in the amount of the final invoice amount (including value-added tax). We accept this assignment.

If the goods subject to retention of title are sold together with other goods not supplied by us, whether without or after processing, the assignment of

the claim from the resale shall only apply in the amount of the value of the goods subject to retention of title invoiced by us.

In the event of the buyer's breach of contract, in particular default of payment, we are entitled to withdraw from the contract and demand the return of the goods subject to retention of title if the buyer fails to meet a reasonable grace period set for payment.

The assertion of the reservation of title and the attachment of the goods subject to retention of title by us shall not be deemed to be withdrawal from the contract, unless we have expressly declared this in writing. After taking back the goods subject to retention of title, we are entitled to realize them. The realization proceeds shall be credited against the buyer's liabilities, less reasonable realization costs.

The buyer must inform us immediately in writing of any access by third parties to the goods subject to retention of title or to the assigned claims so that we can assert our rights of ownership or assignment. If the third party is not able to reimburse us for the judicial and extrajudicial costs of an action in accordance with Section 771 of the German Code of Civil Procedure (ZPO), the buyer is liable for the loss incurred by us.

### §10 Place of Performance

The place of performance for all obligations under this contract is our registered office, unless otherwise stated in these Terms and Conditions.

### §11 Data Processing

The buyer agrees to the processing of their data within the scope of the business relationship.

### §12 Jurisdiction and Applicable Law

The exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is our registered office if the buyer is a





merchant, a legal entity under public law, or a special fund under public law. We are also entitled to sue at the buyer's registered office.

The laws of the Federal Republic of Germany apply exclusively to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

Note: This translation is provided for informational purposes only. In case of any discrepancies between the German original and this English translation, the German version shall prevail.