

## Standard Terms and Conditions

for the delivery of new and used machinery, equipment and consumer goods – **last updated April 2022**

### I. General

- The following terms and conditions of delivery ("Terms and Conditions") shall govern all contractual agreements, deliveries and other services, including all consulting services, which are not governed by a stand-alone consulting agreement and provided they are not amended or excluded with the express written consent of the seller.
- Terms and conditions of the purchaser shall not form part of the agreement even if the seller fails to object to them again and performs the contractually owed delivery/service without reservation.
- Any agreements deviating from these Terms and Conditions are to be included in the order confirmation.
- The seller does not participate in any consumer conciliation proceedings under the German Consumer Alternative Dispute Resolution Act (*Verbraucherstreitbeilegungsgesetz*, "VSBG").

### II. Offer and scope of delivery

- All offers of the seller are non-binding and subject to change. The documents pertaining to the offer, such as illustrations, drawings, weight and dimension specifications, are only approximately indicative unless they are expressly designated as binding. Performance and operating costs are stated as average values. The seller hereby reserves title and copyrights to cost estimates, drawings and other documents. They may not be made accessible to third parties.
- The contract shall be formed upon confirmation of the order by the seller in text form. Under section 126b of the German Civil Code (*Bürgerliches Gesetzbuch*, "BGB"), communication by fax/e-mail shall satisfy the text form requirement.
- All agreements made between the seller and the purchaser shall be recorded in writing in the delivery agreement/order confirmation. The foregoing shall also apply to ancillary agreements and warranties. If contractual amendments are agreed orally, the parties shall record these in writing promptly and incorporate them as an addendum to the delivery agreement/order confirmation.
- Information contained in descriptions provided to the purchaser as to the scope of delivery, appearance, performance, dimensions, weight, fuel/energy consumption and operating costs shall constitute terms of the agreement. They serve as the standard for determining whether the purchased item is free of defects. The seller hereby reserves the right to modify the design and form of the delivered item provided that the item is not materially altered as a result and the modification is reasonable for the purchaser.

### III. Prices and payment

- In the absence of any special agreement, prices shall apply ex seller's warehouse or, if shipped directly from the manufacturer, ex works. Prices are stated net of statutory VAT and do not include delivery and shipping charges. The seller shall be bound by the agreed price only for the agreed delivery period, albeit for a minimum of four months. The seller shall be entitled to claim reimbursement from the purchaser of any additional expenses incurred due to the purchaser's default in acceptance.
- If there is a period of more than four months between the date of contracting and the date of delivery, the seller shall be entitled to reasonably change the price for the respective purchased item. The foregoing shall apply particularly in those cases where the seller's supplier has increased the purchase price for the respective purchased item because the cost of labour, external service providers, materials and raw materials has increased or due to an event of force majeure.  
If the seller increases the purchase price based on the aforementioned provision, the purchaser shall have a right of rescission, subject to the proviso that the purchaser is a **consumer**. To assert this right, the purchaser must notify the seller of their status as a consumer within two weeks of being informed of the price increase; notice of rescission shall be deemed timely if received by the seller within the two-week period. Once the two-week period has expired, the purchaser may no longer rescind the agreement on grounds of the price increase.
- In the absence of a special agreement, payment shall be made in full upon delivery or provision and receipt of the invoice within 12 days without any deductions and free of transaction charges (*frei Zahlstelle*) to the seller. The purchaser's right to withhold performance under section 320 BGB shall remain unaffected. Any discounts granted shall apply only provided that the purchaser is not in arrears with payment of previous deliveries.
- The purchaser may only set-off those counter-claims against the seller which are uncontested or have been declared final and binding by a court of law. The purchaser may only assert a right to withhold performance to the extent that such right is based on claims arising out of the purchase agreement. If notice of defects is given, the purchaser may only withhold payments to the extent reasonable in proportion to the defects identified.
- Payments may only be made to staff of the seller provided that they hold a valid power of attorney to collect debts.

### IV. Delivery deadlines and default

- Agreed delivery deadlines and dates shall only be binding if they have been expressly designated as such by the seller. The delivery deadline shall commence on the date of contracting, albeit not until any documents, permits, approvals to be procured by the purchaser have been obtained and any agreed down payment has been received.
- The right of correct and timely delivery by the seller's own suppliers is hereby reserved.
- The delivery deadline shall be reasonably extended in the event of lawful labour disputes, in particular strikes and lockouts, and where unforeseen impediments to performance occur outside the sphere of control of the seller or its vicarious agents, insofar as such impediments demonstrably affect the delivery of the sold item.
- The foregoing shall apply *mutatis mutandis* if the seller's own suppliers fail to deliver on time. The seller shall have a right of rescission if the manufacturer fails to deliver. However, the foregoing shall not apply if the seller is responsible for such failure to deliver (e.g., because the seller is in default of payment).
- Compliance with the delivery deadline is contingent on performance of the purchaser's contractual obligations.
- If the purchaser incurs loss or damage due to a delay, the seller shall be liable in accordance with the statutory provisions.
- The seller shall not be liable for delays in delivery or non-delivery (impossibility) due to fault on the part of its upstream suppliers, with

the exception of any fault on the seller's part for failure to exercise due care in selecting or monitoring those suppliers. The seller shall in any case be obligated to indemnify the purchaser if the purchaser is unable to fully enforce claims against suppliers that have been assigned to them.

- In addition to the statutory period under section 286 (3) BGB and the dunning notice, the seller may also hold the purchaser in default in deviation from the period under section III. 3. by specifying another period of time for payment according to the calendar within the meaning of section 286 (2) BGB.
- If the purchaser defaults on their payment obligation, default interest shall be due thereon. If the purchaser is a consumer, default interest will be charged at the rate of 5 percentage points p.a. above the applicable base interest rate, and if the purchaser is a merchant, at the rate of 9 percentage points p.a. above the applicable base interest rate (section 247 BGB). The right to claim greater loss or damage due to default is hereby reserved. In the event the seller claims that it incurred greater loss or damage due to default, the purchaser shall be given the opportunity to show that the loss or damage claimed was not in fact incurred or that the amount was substantially lower.

### V. Transfer of risk and transport

- In the absence of a special agreement, the route and method of shipping shall be at the discretion of the seller.
- In the case of a sale involving the carriage of goods to a destination other than the place of performance, risk of loss shall pass to the purchaser when the goods are handed over to the freight forwarder or carrier, but no later than when the goods leave the warehouse or, in the case of direct shipment, ex works, when the goods leave the factory. The foregoing shall also apply where partial deliveries are made or the seller has agreed to provide additional services. The goods shall be insured at the purchaser's request and expense.
- If the shipment is delayed due to circumstances for which the purchaser is responsible, the risk of loss shall pass to the purchaser from the offered date of delivery. However, the seller shall be required to take out the insurance requested by the purchaser at the purchaser's request and expense.
- Without prejudice to the rights under section VII (Notice of defects and liability for defects), delivered items must be accepted by the purchaser, even if they have minor defects.
- Partial deliveries are permitted to the extent this is reasonable for the purchaser.

### VI. Retention of title

- The seller hereby retains title in the goods until such time as all receivables arising out of the business relationship with the purchaser have been paid in full.
- The purchaser shall handle the purchased item with care, secure it against attachment by third parties and, where so agreed in writing, where an extended payment term is granted or where a financing purchase is involved, shall insure it without undue delay against fire, theft and water damage at replacement value and shall document this to the seller upon request; otherwise, the seller shall be entitled to insure the item itself at the purchaser's expense. The purchaser shall assign any compensation claims to the seller.
- The purchaser may not pledge or transfer the purchased item as security without the seller's consent. The purchaser shall, in the event of attachments or other interventions by third parties, the purchaser shall notify the seller in writing without undue delay in order to allow the seller to bring an action under section 771 of the German Code of Civil Procedure (*Zivilprozeßordnung*, "ZPO"). To the extent that the third party is unable to reimburse the seller the costs (both in and out of court) of an action under section 771 ZPO, the purchaser shall offset the costs.
- If the purchaser is a merchant, the goods may be re-sold in the ordinary course of business. The purchaser hereby assigns all receivables in the amount of the final invoice amount (including VAT) that they would have generated from the re-sale to their customers or third parties, regardless of whether the purchased item was resold without processing or after processing. The purchaser shall be authorised to collect such receivables even after assignment. The seller's authority to collect the receivable itself shall remain unaffected. However, the seller undertakes not to collect the receivable as long as the purchaser duly meets their payment obligations. Otherwise, the seller may require that the purchaser notify it of the assigned claims and their debtors, provide all information necessary for collection along with the associated documents and notify the debtor of the assignment.
- If a vehicle certificate of title (*Zulassungsbescheinigung Teil II*) has been issued for the purchased item, the seller shall have the sole right to possession thereof for the duration of the retention of title.
- If the purchaser acts in breach of contract, in particular by defaulting on payment, the seller shall be entitled, after having given notice of breach and rescission, to take back the goods, and the purchaser shall be obligated to return them.
- All costs associated with taking back and liquidating the purchased item shall be borne by the purchaser. The liquidation costs absent supporting documentation shall amount to 10% of the liquidation proceeds including VAT. They shall be set higher or lower if the seller can show that the costs were higher or the purchaser can show that the costs were lower. The proceeds shall be credited to the purchaser after deducting the costs and other receivables of the seller in connection with the purchase agreement.

### VII. Notice of defects and liability for defects

The seller shall be liable for defects as follows:

- The purchaser must inspect the received goods without undue delay upon arrival to verify quantity, quality and warranted characteristics and give prompt notice of any apparent defects. If the agreement constitutes a commercial transaction for both parties, section 377 of the German Commercial Code (*Handelsgesetzbuch*, "HGB") shall apply with the proviso that apparent defects must be notified to the seller in writing within 14 days.
- Goods shall be repaired or new goods delivered free of charge if they prove to be unfit for use or their fitness for use is significantly impaired due to circumstances that occurred prior to the transfer of risk – in particular due to faulty design, poor construction materials or defective workmanship. As between merchants, the seller shall have the right to choose the form of cure. If the purchaser is a **consumer**, the form of cure chosen by the purchaser may be rejected by the seller if this would unreasonably burden the seller with costs which would not have arisen had the purchaser chosen a different form of cure, provided that this does not inure to the

detriment of the purchaser. Replaced parts shall become the property of the seller. If the purchaser is a merchant, the seller shall have a claim against the purchaser for unrestricted compensation for loss of use if the entire purchased item is replaced in effecting cure. The amount of such compensation shall be based on the average rental costs for the item that would have been incurred during the term of use.

- In the case of merchants, warranty claims of the purchaser shall become time-barred 12 months from the date on which risk of loss transfers; by contrast, warranty claims of purchasers qualifying as **consumers** shall become time-barred in accordance with the statutory provisions from the date on which risk of loss transfers. In the case of used goods, warranty claims of purchasers qualifying as **consumers** shall become time-barred 12 months from the date on which risk of loss transfers; if the purchaser is a merchant, they shall only have warranty claims if this was agreed in writing with the respective purchaser.
- No warranty is given for loss or damage incurred for the following reasons: unsuitable or improper use, faulty assembly or commissioning by the purchaser or third parties, failure to carry out customary and/or manufacturer-recommended servicing, normal wear and tear (in particular of wearing parts), faulty or negligent handling, unsuitable operating equipment, replacement materials, chemical, electronic or electrical interferences, provided that they are not due to fault on the part of the seller.
- If the defects are to be remedied, the purchaser shall set the seller a reasonable deadline to complete the necessary work. Only in urgent cases where operational safety is at risk and to prevent unreasonably excessive damage (in which case the seller must be notified immediately) or if the seller fails to remedy the defect in a timely fashion, the purchaser may take steps itself to have the defect remedied by third parties and claim reimbursement of the necessary costs from the seller.
- Warranty claims for replacements and repairs shall become time-barred after 12 months. The warranty period for the delivered item shall be extended by the period during which it is unable to be used due to the repair work.
- Where improper modifications or repairs are carried out by the purchaser or third parties without the prior consent of the seller, this shall preclude the seller's liability for any consequences arising therefrom.
- If the seller is obligated to cure performance by repair or replacement and fails to do so despite repeated attempts, the purchaser may rescind the agreement or claim a reduction in the contract price. As a rule, the seller must be given two opportunities to cure performance within a reasonable period, taking into account the burden this places on the purchaser and the complexity of the defect.
- Section VIII shall govern claims for damages.

### VIII. Limitation of liability and damages

- The seller's liability shall be governed by the statutory provisions. However, liability (regardless of the legal grounds) shall be excluded to the extent that the breach committed involves a non-material breach of duty and is not due to wilful or grossly negligent conduct. The foregoing shall not apply in cases of injury to life, limb or health or if the seller is covered by liability insurance. In such case, the seller shall assign its claims against the insurer to the purchaser.
- The purchaser's claims against the seller shall become time-barred in accordance with the statutory provisions. However, if the purchaser is a merchant, a preclusion period of six months shall apply insofar as the seller rejected the purchaser's claim in writing as being without merit.

### IX. Place of performance, jurisdiction, governing law

- Where the purchaser is a **consumer**, the place of performance and exclusive place of jurisdiction for deliveries and payments as well as for any and all disputes arising out of the contractual relationship between the parties shall be the purchaser's place of residence. Where both parties are merchants within the meaning of the German Commercial Code (*Handelsgesetzbuch*, "HGB") or legal persons under public law, or a special fund under public law (section 38 ZPO), the place of performance and thus the exclusive place of jurisdiction shall be the head office of the seller.
- Where the purchaser is a **consumer** and does not have a general place of jurisdiction in Germany, relocates their place of residence or habitual abode outside of Germany after the date of contracting or where their place of residence or habitual abode is not known at the time the action is brought, the general provisions of the German Civil Code (ZPO) shall apply. The place of jurisdiction under section IX shall apply where the purchaser is a merchant. 1.
- The relationships between the parties shall be governed exclusively by the laws of the Federal Republic of Germany, excluding the provisions of the UN Convention on Contracts for the International Sale of Goods (CISG).

### X. Data protection

Data processing is carried out for the purpose of performing a contract and the legal basis is Article 6(1)(b),(f) of the EU General Data Protection Regulation (GDPR). Data shall only be disclosed to third parties within the scope and for the purpose of submitting credit history inquiries to corresponding credit reporting agencies. The data shall be deleted as soon as they are no longer required for the intended purpose. The purchaser shall be entitled to request information about the data stored at the seller and require data to be deleted. The purchaser shall furthermore have the right to lodge a complaint with the supervisory authority (State Commissioner for Data Protection (*Landesbeauftragter für Datenschutz*)).