

# **General Terms and Conditions of Business and Delivery**

**Last updated: October 2022**



## A. General terms and conditions

### 1. Scope

- 1.1 All our quotations, deliveries and services are subject to these General Terms and Conditions (GTCs) in the version valid at the time the order is placed. We also accept orders only subject to these GTCs. We do not recognise any terms and conditions of the Customer / Lessee that deviate from these GTCs and hereby expressly object to the same. The Customer's / Lessee's deviating general terms and conditions shall only be valid if we expressly agree to them in writing.
- 1.2 All agreements made between ourselves and the Customer/ Lessee for the purpose of executing this contract shall be recorded in text form.
- 1.3 We do not conclude contracts with consumers under Section 13 of the German Civil Code (BGB). Our General Terms and Conditions shall only apply to entrepreneurs, legal entities under public law or special funds under public law within the meaning of Section 310 of the German Civil Code.

### 2. Offers and conclusion of the contract

- 2.1 We are entitled to accept orders within a period of two weeks after receiving the same. The contractual offer contained in the order placement shall be accepted in text form.
- 2.2 Our quotations are non-binding and subject to alteration. Drawings, illustrations, dimensions, weights or other performance data are only binding if this is expressly agreed in writing. Statements made in our quotations or other contractual documents do not constitute any assurance of properties and do not give any guarantee unless they are expressly designated as such and agreed in text form.
- 2.3 Sample and trial deliveries shall be invoiced if they are not returned to us, carriage paid, after 15 days at the latest.
- 2.4 All of our quoted prices are exclusive of the respective, applicable and statutory value-added tax.

### 3. Miscellaneous

- 3.1 The applicability of Part B of the German Regulations on Contract Awards for Public Works is excluded.
- 3.2 The law of the Federal Republic of Germany shall apply to these terms and conditions and the entire legal relationship between us and the Customer / Lessee. The provisions set out in the UN Convention on Contracts for the International Sale of Goods shall not apply.
- 3.3 Insofar as the Customer / Lessee is a merchant, the place of jurisdiction for all disputes arising from this contract shall be Leonberg Local Court for disputes before the Local Court and Stuttgart Regional Court for disputes before the Regional Court.
- 3.4 Should a provision set out in these terms and conditions or a provision in the context of other agreements be or become invalid, this shall not affect the validity of all the other provisions or agreements.
- 3.5 We are entitled to store, use, transfer, modify and erase personal data to the extent necessary for execution of the contract. More details on data processing for execution of the contract and other purposes can be found in our privacy policy.
- 3.6 Documents and drawings provided to the Customer / Lessee, as well as services we provide for the design and manufacture of the delivery item / rented property may only be used by the Customer / Lessee for the contractually intended purpose and may not be made accessible to third parties or be made the subject of publications without our consent.

## 4. Language

- 4.1 These General Terms and Conditions are written in German and English. In the event of conflicts regarding the content of the General Terms and Conditions, the German version shall take precedence.

## B. Terms and conditions of sale and delivery

### 1. Time of delivery and performance

- 1.1 Delivery dates or deadlines are only ever approximate unless they have been agreed in writing as binding. The delivery obligations are subject to correct and timely delivery to ourselves on the part of our suppliers, unless we are at fault for incorrect or delayed delivery to ourselves on the part of our suppliers.
  - 1.2 We shall not be responsible for delays in delivery and performance due to force majeure and due to events that make delivery considerably more difficult or impossible for us, not only temporarily, for reasons that we are not responsible for, even in the case of bindingly agreed deadlines and dates.
    - (a) This particularly includes war, acts of terrorism, strikes, lawful lock-outs, official orders, natural disasters, epidemics and plagues, etc., even if they occur on our suppliers' or their sub-suppliers' premises. Such circumstances entitle us to postpone the delivery or performance of the service for the duration of the disruption plus a reasonable lead time.
    - (b) If the disruption lasts longer than three months, or if it becomes apparent that the disruption will continue beyond this period, both we and the Customer shall be entitled to withdraw from the contract in whole or in part with regard to the part not yet fulfilled.
    - (c) If the delivery time is extended, or if we are released from our obligation, the Customer cannot derive any claims for damages from this.
    - (d) We can only invoke the aforementioned circumstances if we inform the Customer immediately.
    - (e) We are obligated to strive to the best of our ability to limit the effects of force majeure as far as possible.
  - 1.3 If we are responsible for the failure to comply with bindingly agreed deadlines and dates, or if we are in default, the Customer shall be entitled to compensation for default in the amount of 0.5% for each full week of default, but in no case more than a total of 5% of the invoice value of the deliveries and services affected by the default. Any further claims are excluded unless the delay is due to at least gross negligence on our part.
  - 1.4 We are entitled to make partial deliveries and provide partial performance of services at any time, unless partial delivery or partial performance of services is not of interest to the Customer.
  - 1.5 Compliance with our delivery and performance obligations is subject to the timely and proper fulfilment of the Customer's obligations.
  - 1.6 If the Customer is in default of acceptance, we shall be entitled to demand compensation for the damage we incurred. The risk of accidental deterioration and accidental loss shall pass to the Customer on occurrence of default of acceptance.
- ### 2. Prices and payment conditions
- 2.1 The prices refer to the time when the contract is concluded.
  - 2.2 Unless agreed otherwise, the purchase price is due for payment without any deductions within 15 days after receipt of the invoice. The interest on arrears is 8 percentage points above the base rate, unless we can prove a higher interest charge. Payments to our representatives cannot be made with a releasing effect.





### 3. Assignment and right of retention

- 3.1 The assignment of a claim that the Customer asserts against us is only legally valid with our consent or approval. Section 354 a of the German Commercial Code (HGB) remains unaffected.
- 3.2 The Customer shall only be entitled to offsetting rights if its counter-claims have been legally established, are undisputed or have been recognised by us.
- 3.3 Any right of retention that we are entitled to shall not extend to the Customer's personal data.
- 3.4 The Customer is only entitled to exercise a right of retention insofar as its counter-claim is based on the same contractual relationship or has been legally established or is undisputed by us.

### 4. Transfer of risk

- 4.1 The risk shall pass to the Customer when the goods are handed over to the Customer. If the goods are transported by a third party, the risk shall pass to the Customer as soon as the goods have been handed over to this transporting party or have left the Seller's warehouse for the purpose of dispatch. If dispatch is delayed at the Customer's request, the risk shall pass to the Customer on notification of readiness for dispatch.

### 5. Reservation of ownership

- 5.1 Our deliveries are made exclusively under reservation of ownership of the goods we deliver until all claims, including ancillary claims, arising from the entire business relationship are paid in full.
- 5.2 The Customer is permitted to resell the goods delivered under reservation of ownership in the context of the ordinary course of business.

The Customer assigns to us claims against its customers from sales of our reserved property in the amount of the price we charged.

The goods we deliver shall be handled and processed on our behalf, free of charge and without any obligation for us. If the goods we deliver are processed, combined or mixed with other goods, we shall acquire joint ownership of the resulting new goods in the ratio of the invoice value of the goods we deliver to the other goods at the time of processing, combination or mixing.

The joint ownership objects arising thereafter shall be deemed to be goods that are subject to reservation of ownership under (1). If our ownership expires as a result of combination or mixing, the Customer shall already at this point transfer to us the rights of ownership to the new goods that it is entitled to with the rank of the invoice value of our delivered goods, and shall keep them in safe custody for us free of charge. The resulting joint ownership shall be deemed to be goods that are subject to reservation of ownership under (1).

- 5.3 In the event of a breach of contract by the Customer, and particularly in the event of default in payment, the Customer shall be obligated to surrender the goods that are our property. The assertion of the reservation of ownership and the seizure of the delivered goods shall not be deemed to be a withdrawal from the contract.

On request, the Customer shall immediately send us a list of the claims assigned to us in accordance with the above provisions.

- 5.4 The Customer shall bear any costs of interventions. We undertake to release securities at the Customer's request, subject to selection, to the extent that the value of the securities exceeds the claims to be secured by more than 20%.

### 6. Defects

- 6.1 The goods are delivered free of manufacturing and material defects. The period for asserting claims for defects is one year from delivery of the goods. The sale of second-hand goods takes place under exclusion of any warranty.
- 6.2 If our operating or maintenance instructions are not observed, modifications are made to the goods, parts are replaced or consumables that do not correspond to the original specifications are used, claims due to defects in the goods shall not apply if the Customer does not refute a corresponding substantiated claim that one of these circumstances caused the defect.
- 6.3 The Customer must record any defects in the goods on the delivery note and immediately inform us of the same in writing, at the latest within one week of receipt of the delivered goods, otherwise the goods shall be deemed to have been approved. Defects that cannot be discovered within this period even on inspection with reasonable care shall be reported to us in writing immediately after discovery, otherwise the goods shall also be deemed to have been approved in this respect.
- 6.4 If we receive a notification from the Customer indicating that the goods are defective, we shall demand, at our discretion and at our expense, that
  - (a) the defective goods are sent to us for repair and subsequent return;
  - (b) the Customer keeps the defective goods ready and we carry out the repair on the Customer's premises.
- 6.5 If the Customer requests that rectification work be carried out at a location specified by it, we can comply with this request, whereby replaced parts are not charged, while working time and travel expenses are to be paid at our standard rates.
- 6.6 If the rectification of defects fails after a reasonable period of time, the Customer may, at its discretion, demand a reduction in remuneration or withdraw from the contract.
- 6.7 Liability for normal wear and tear is excluded.
- 6.8 Only the direct customer shall be entitled to make claims against us on account of defects.

### 7. Liability

- 7.1 Claims for damages are excluded irrespective of the type of breach of duty, including tortious acts, except in the case of wilful misconduct or gross negligence.
- 7.2 In the event of a breach of material contractual obligations, we shall be liable for any negligence, but only up to the amount of the foreseeable damage. Claims for lost profits and saved expenses, and claims for damages asserted by third parties, as well as other indirect and consequential damages, cannot be demanded unless a quality feature that we guaranteed has the specific purpose of protecting the Customer against such damages.
- 7.3 The limitations and exclusions of liability in (1) and (2) do not apply to claims that have arisen due to fraudulent conduct on our part  
or in the case of claims under a right of recourse pursuant to Sections 478 and 445 a of the German Civil Code (BGB) in the case of liability for guaranteed quality features, for mandatory liability pursuant to the German Product Liability Act, as well as for damages arising from injury to life and limb or harm to health.
- 7.4 Insofar as our liability is excluded or limited, this shall also apply to our employees, representatives and vicarious agents.





## C. Terms and conditions of lease

For lease agreements, the following conditions shall have priority with respect to the above general conditions and the sales and delivery conditions.

### 1. Rented property and lease

- 1.1 Objects and materials that we rent out – hereinafter referred to as ‘rented property’ – are always in a used condition. There is no entitlement to new materials unless this has been expressly agreed.
- 1.2 The minimum lease is 30 consecutive calendar days. This shall also be charged for early return. The lease shall run for an indefinite period of time, shall commence with handover to the forwarding agent, the carrier or the Lessee, and shall end with return to the rental warehouse specified in the contract. Delivery and return days are rental days. Departure from or receipt at our factory is decisive.

If the delivery item needs to be repaired or cleaned after return, the lease shall be extended by the number of days required for this.

- 1.3 Each month is billed as 30 days.

### 2. Rent

The leasing charge is calculated monthly retroactively at the end of the respective month.

### 3. Defects

- 3.1 The Lessee must record any defects in the rented property on the delivery note and immediately inform us in writing, at the latest within one week of receipt of the rented property, otherwise the rented property shall be deemed to have been approved. This does not apply to defects that we have fraudulently concealed.
- 3.2 We provide a warranty for material defects in the rented property under the following conditions and to the following extent: All parts that prove to be defective as a result of a circumstance prior to the transfer of risk shall be repaired or replaced free of charge at our discretion.
- 3.3 The Customer shall notify us immediately of any defects, malfunctions or damage. If rectification of defects and replacement delivery fail, and if the defect affects the suitability for contractual use, the Lessee shall be exempt from the payment of rent. The Lessee shall only pay an appropriately reduced rent for the period during which the suitability is reduced. An insignificant reduction in suitability shall be disregarded.

### 4. Liability

The regulations of section B. item 6 shall apply. In derogation hereof, claims for damages or self-participation and replacement of the necessary expenditures according to Sec. 536a German Civil Code shall be excluded, unless we carry the burden of intent or gross negligence.

### 5. The lessee's duties

- 5.1 Without our written consent, the Lessee is not entitled to move the rented property to a location other than the contractually agreed location, to install it or to sublet it. The Lessee shall bear the risk of use of the rented property.
- 5.2 The Lessee shall return the rented property to the address stated in the contract at its own expense and risk following termination of the lease, unless expressly agreed otherwise.

Collection by us or by third parties commissioned by us shall only take place if expressly agreed, and even then only at the Lessee's expense and risk. The Lessee shall provide the rented property in a ready-to-collect state and properly load it onto the means of transport.

- 5.3 The Lessee is obligated to return the rented property in a complete, cleaned and functional condition – as delivered – without any damage exceeding normal wear and tear, in particular according to dimensions – with BKS push-pull props according to the information in the delivery note – in a bundled, spindled and palletised state and, on delivery, in transport and storage racks and suitable for unloading with a forklift. Otherwise, we shall be entitled to charge the additional expenditure incurred for this at hourly rates of at least € 50 / hour.
- 5.4 The Lessee is obligated to prove that the rented property was returned in accordance with the contract.

### 6. The Lessee's liability

- 6.1 The Lessee shall be liable in accordance with the statutory provisions for any rented property that is lost, missing, rendered unusable or damaged during the lease.  
The Lessee shall bear the costs of disposing of rented property that has become unusable. Rented property that can no longer be repaired at reasonable expense is deemed to be unusable, in particular if the cost of repair exceeds the fair value of the rented property.
- 6.2 Insofar as the Lessee is required by law or contract to pay compensation for damages due to failure to return the rented property, in particular in the event of destruction, total damage or loss of the rented property, the damage shall be calculated according to the replacement value of the rented property according to the price list valid at the time the contract was concluded, less an appropriate used discount for depreciation of 10% of the list price plus 90% of the rent already paid.  
The Lessee is permitted to prove a higher, deviating reduction in value.  
The rental claims we accrued up to the time of the damage event remain unaffected.

### 7. Right of termination

- 7.1 The right to extraordinary termination without notice for due cause remains unaffected.
- 7.2 Due cause entitling us to extraordinary termination without notice is given in particular if the Lessee is more than 14 days in arrears with their rent payment, treats the rented property improperly or breaches (5) above.

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