

Terms and Conditions of Sale and Delivery (GTC)

§ 1 Validity

- (1) All our deliveries, services and offers are provided exclusively on the basis of these GTC. These GTC are an integral part of any and all contracts entered into between us and our contractual partners (“Customers”) for the deliveries and services offered by us. They shall also apply to all future deliveries, services or offers, even if no separate agreements have been made to this effect.
- (2) Any GTC of the Customer or of any third parties shall not apply, even if we do not separate object to their validity in individual cases. Even if we refer to a letter containing GTC of the Customer or of any third party or making reference to them, this does not constitute our consent to the validity of these GTC
- (3) These GTC shall be deemed to be accepted by the Customer by their placing confirming knowledge of these GTC, but at the latest upon acceptance of the delivery or service in question.
- (4) Our GTC only apply to traders (section 14 of the German Civil Code (BGB [*Bürgerliches Gesetzbuch*])), legal entities under public law or special funds under public law.
- (5) Any agreements made between us and our Customers in individual cases (including side agreements, supplements and amendments) shall take precedence over these GTC. Such agreements shall be set out in the form of a written contract or a written confirmation on our part, which shall then be authoritative with regard to their content.
- (6) Any legally relevant declaration which the Customer has to make towards us after entering into the contract (e.g. the setting of deadlines, notifications of defects, declarations of withdrawal or reduction) must be in writing to be effective.

§ 2 Offer and conclusion of contract

- (1) All our offers are subject to change and non-binding unless they are expressly marked as binding or contain a specific deadline for acceptance. Orders can be accepted by us within 14 days after receipt.
- (2) Any information concerning the object of the delivery or service (such as concerning weight, dimensions, utility values, load-bearing capacity, tolerances and technical data) as well as our representations of the same (such as in the form of drawings and illustra-

tions) are only authoritative by way of approximation unless their usability for the contractually intended purpose requires exact conformity. They do not constitute guaranteed characteristics, but are merely descriptive or signifying in nature. Any deviations customary in the trade which are made on the basis of legal regulations or constitute technical improvements as well as the replacement of any components by equivalent components shall be permitted provided that they do not interfere with the usability of the items for their contractually intended purpose.

- (3) We reserve ourselves the right of ownership and the copyright with regard to any offers or quotations submitted by us, as well as to any drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and other auxiliary material made available to the Customer. The Customer shall refrain from making such items available - both as such and in terms of their content - to any third parties, from disclosing them, from using them directly themselves or through any third parties, or from reproducing them with our express consent. At our request, they shall return these items in full as well as destroy any copies made if they are no longer required by the Customer in their ordinary course of business or if negotiations do not result in the conclusion of a contract.
- (4) In case of the Customer providing us with information of their own - such as dimensions, design drawings or other documents - for the execution of the order, they shall be liable for ensuring that the use of these documents does not infringe any patent rights or other industrial property rights of any third parties. In this respect, the Customer shall be obliged to indemnify us from and hold us harmless against any liability claims of third parties upon first request. It is not our obligation to check whether the implementation of any documents made available to us infringes the property rights of any third parties. We are obliged to make any plans designated as Confidential by the Customer only available to third parties with the consent of the Customer.

§ 3 Prices and payments

- (1) Our prices apply to the scope of performance and delivery stated in our order confirmations, with additional and special services being charged separately. The prices shall be understood as ex works plus packaging costs, statutory value added tax, customs duties for export deliveries as well as fees and other public charges.
- (2) If the prices agreed upon are based on our listed prices and delivery is to take place more than 4 months after conclusion of the contract, our listed prices as of the time of delivery shall apply.
- (3) Any invoiced amounts shall be due and payable within 30 days without any deductions unless otherwise agreed in writing. As far as adherence to the deadline is concerned, receipt of payment by us shall be decisive. If the Customer fails to pay as and when due, interest of 5% p.a. shall be charged on the outstanding amounts, with the right to claim higher interest and further damages in the event of default remaining unaffected.
- (4) The offsetting with any counterclaims of the Customer or the retention of payments due to such claims shall only be permitted for counterclaims which are undisputed or finally adjudicated.

- (5) We have the right to execute or provide outstanding deliveries or services only against advance payment or against the provision of security if, after the conclusion of the contract, we become aware of circumstances which are likely to significantly reduce the creditworthiness of the customer and which jeopardise the satisfaction of our outstanding claims from the respective relationship.
- (6) As per the conditions of the foregoing section 5 of these GTC, we also have the right to pronounce our claims to be due and payable with immediate effect or to ask for reasonable advance payments, even in deviation from the contractually agreed terms of payment.
- (7) Shipments of goods will only be insured by us at the express request of the Customer, with the costs incurred in this respect being borne by the Customer.
- (8) Despite any provisions to the contrary, we have the right to first offset any payments by the Customer against the Customer's older debts and shall inform the Customer about the type of such offsetting. If any costs and payments have already been incurred, we shall have the right to set off the payment first against the costs, then against the interest and finally against the principal claim.

§ 4 Delivery / Delivery time

- (1) Our deliveries are ex works. Any promised deadlines or dates for deliveries and services are always only stated by way of approximation unless a fixed deadline or date has been expressly promised or agreed upon. If shipment has been agreed, delivery periods or dates of delivery refer to the time of handover to the forwarder, carrier or other third party commissioned with the transport.
- (2) Unless expressly agreed otherwise, agreed periods of delivery shall commence upon receipt of the order confirmation by the Customer, but at any rate not before any and all technical and content-related issues to be clarified with the Customer have been finally resolved, all obligations of cooperation on the part of the Customer have been fulfilled in full and all payments due, in particular any down payments, have been made in full in accordance with the contractual agreements. Any periods of delivery agreed upon shall be extended accordingly.
- (3) We shall not be liable for any frustrations or delays of delivery insofar as these are caused by force majeure or by other events which were unforeseeable at the time of entering into the contract (e.g. disruptions in operations of any kind, difficulties in the procurement of materials or energy, transport delays, strikes, lawful lockouts, shortages of labour, energy or raw materials, difficulties in obtaining the necessary official permits, measures taken by the authorities or the failure of suppliers to deliver or to deliver correctly or on time) and which are beyond our cope of influence or responsibility. If such events seriously impede or frustrate delivery or performance on our part, we shall be entitled to withdraw from the contract. Should such impediments be temporary in nature, the periods of delivery and performance shall be extended or the dates of delivery or performance be postponed by the duration of the impediment plus any reasonable start-up period. If the Customer cannot reasonably be expected to accept the delivery or service as a result of the delay, they shall be free to withdraw from the contract with immediate effect by written notice.

- (4) We have the right to make partial deliveries if
 - this does not interfere with the usability of the delivery within the scope of the contractual purpose,
 - the delivery of the remainder of the goods ordered is ensured and
 - the Customer does not incur any significant additional expenses or costs as a result.
- (5) Claims for damages arising from any delay are limited to 5% of the purchase price. This shall not apply if the default is due to intent, gross negligence or a material breach of duty or constitutes a material breach of duty, in which case statutory liability shall continue to apply. The conditions constituting a material breach of duty within the meaning of this provision shall be more closely described in section 7 of these GTC. However, this statutory liability as per sentence 2 shall, in each case, be limited to the foreseeable damage if the default is attributable to gross negligence on the part of another agent, i.e. someone who is neither one of our legal representatives nor one of our executives, or if the material breach of duty was caused by mere negligence.
- (6) Claims for damages arising from any delay are limited to 5% of the purchase price. This shall not apply if the default is due to intent, gross negligence or a material breach of duty or constitutes a material breach of duty, in which case statutory liability shall continue to apply. The conditions constituting a material breach of duty within the meaning of this provision shall be more closely described in section 7 of these GTC. However, this statutory liability as per sentence 2 shall, in each case, be limited to the foreseeable damage if the default is attributable to gross negligence on the part of another agent, i.e. someone who is neither one of our legal representatives nor one of our executives, or if the material breach of duty was caused by mere negligence.
- (7) The foregoing limitations of liability as per sections 5 and 6 do not apply if our commercial agreement with the Customer expressly relates to a fixed-date commercial transaction.
- (8) In case of import and export transactions, we have the right to withdraw from the contract if we have failed to obtain the necessary permits.
- (9) We shall furthermore have the right to withdraw from the contract if the performance of the contract is met with unforeseen obstacles, in particular technical difficulties, which are insurmountable or the overcoming of which would cause us undue hardship as compared with the value of the services to be provided by us, unless we ourselves should be responsible for these impediments.
- (10) Default in delivery shall only be deemed to occur after a corresponding reminder from the Customer. In the event of a default in delivery, the Customer shall only be entitled to withdraw from the contract if they have set a reasonable grace period after the commencement of the default.
- (11) Any contractual penalties due to late delivery are excluded.

§ 5 Place of performance, dispatch / packaging, transfer of risk

- (1) The place of performance for all obligations arising from the contractual relationship shall be Velbert, unless stipulated otherwise.
- (2) The mode of dispatch and the packaging shall be subject to our reasonable discretion.
- (3) The transfer of risk shall take place, at the latest, upon handing over the delivery item to the forwarding agent, carrier or other party designated to carry out the shipment. This also applies in case of partial deliveries. If dispatch or handover are delayed as a result of circumstances for which the Customer is responsible, the transfer of risk to the Customer shall take place on the day on which the item of delivery is ready for dispatch and we have notified the Customer accordingly.
- (4) Any storage costs arising after the transfer of risk shall be borne by the Customer. In the event of storage by us, the storage costs shall amount to 1% of the invoice amount of the delivery items to be stored per week that has expired. We reserve ourselves the right to claim and furnish proof of further or lower storage costs.
- (5) We shall only insure the consignment against theft, breakage, transport, fire and water damage or other insurable risks at the express request of the Customer and at the Customer's expense.
- (6) Insofar as acceptance of the goods is required the goods shall be deemed to have been accepted if the following conditions are met:
 - The delivery and - insofar as we also owe the installation - the installation must have been completed.
 - We must have notified the Customer thereof, making reference to the fact that acceptance is being assumed in accordance with this paragraph and requesting the Customer to formally accept the goods.
 - 20 working days must have elapsed since delivery or installation and the Customer must have started to use the purchased item (such as by putting the delivered into service) and, in the latter case, 10 working days must have elapsed since the delivery or installation, and
 - The Customer must have omitted to accept the goods within this period of time for any reason other than a defect which has been notified to us and which frustrates or significantly impairs the use of the purchased goods.

§ 6 Warranty / Liability for defects

- (1) The defect / warranty period shall be 1 year from delivery (or, if acceptance is required, from acceptance).
- (2) The quality of the goods owed by us is based on the contractual agreements entered into each other with our Customers. Any public statements made by third parties going beyond the information provided by us about the goods shall not be binding on us.
- (3) Details concerning our goods (technical data, dimensions, etc.) are only provided as approximations unless they have expressly been designated to be binding. This information

also does not constitute a guarantee of quality, durability or a guarantee of any other kind unless we have expressly assumed a guarantee designated as such.

- (4) The Customer shall be liable for the accuracy of any measurements given as well as for the correctness of any construction drawings and similar documents provided by them which have an influence on the suitability of the ordered elements for their intended or usual use or otherwise have an impact on the quality or properties of the goods.
- (5) Any warranty rights of the Customer are subject to the condition precedent that the latter has complied with their obligations of inspection and notification of defect as per section 377 of the German Commercial Code (HGB [*Handelsgesetzbuch*]).
- (6) The items subject to the contract have to be carefully inspected immediately after their delivery to the Customer or to the third party designated by the Customer. They shall be deemed to have been approved if we have not received a written notice of defects with regard to obvious defects or other defects which were recognisable during an immediate, careful inspection within 7 working days of delivery or otherwise within 7 working days of the discovery of the defect or any earlier point in time at which the defect was recognisable to the customer during normal use of the item delivered without any closer inspection. At our request, the delivered item in question must be returned to us carriage paid.
- (7) In the event of material defects in the delivered items, we shall first be obliged and entitled to rectify the defect or to make a replacement delivery at our discretion within a reasonable period of time. In the event of failure, i.e. when a rectification or replacement would be impossible, unreasonable, was refused or unreasonably delayed, the Customer shall have the right to withdraw from the contract or to reduce the purchase price to a reasonable extent.
- (8) It shall be our right to make subsequent performance conditional on the prior payment of the purchase price due, with the Customer being entitled to retain a reasonable part of the purchase price in relation to the defect.
- (9) The Customer shall be obliged to give us the time and the opportunity to rectify the defect, and in particular to hand over the rejected goods to us for inspection purposes. If we provide a replacement delivery, the Customer shall be obliged to return the replaced goods to us in accordance with the statutory provisions. Even in the event of rectification, the property rights regarding the replaced products and parts shall be transferred to us. If we were not originally obliged to install the defective item, subsequent performance shall neither include the removal of the defective item nor a new installation.
- (10) We shall not be liable for normal wear and tear, damage due to improper handling, unsuitable or improper use, storage or installation or other external influences or for defects resulting from documents (drawings, descriptions, etc.) submitted or approved by the Customer.
- (11) We shall have the right to ask the Customer for a reimbursement of any expenses to be borne by us for the purpose of inspecting the defect as well as for the purpose of subsequent performance should the Customer's claim concerning the removal of the defect later turn out to be unjustified.

§ 7 Liability

- (1) Our liability for damages, irrespective of the legal grounds - in particular due to frustration of fulfilment, delay or default, defective or incorrect delivery, breach of contract, breach of contract in the course of contractual negotiations and tort [*unerlaubte Handlung*] - shall be limited in accordance with the provisions of this section 7 insofar as fault is involved in the individual case.
- (2) Any further claims on the part of the Customer shall be excluded irrespective of their legal grounds. Therefore, we shall only be liable for damage that has not been caused to the delivered item itself - in particular for any loss of profits or other financial damage to the Customer - only in as far as
 - a) the Customer claims damages in lieu of performance due to the absence of qualities or properties guaranteed by us or
 - b) we have caused the damage intentionally or through gross negligence or through breach of an essential contractual obligation.
However, this statutory liability shall, in each case, be limited to the foreseeable damage if the cause of the damage is attributable to gross negligence on the part of another agent, i.e. someone who is neither one of our legal representatives nor one of our executives, or if the material breach of duty was caused by mere negligence. The conditions constituting a material breach of duty within the meaning of this para. 2 shall hereinafter be described in more detail in para. 7.
- (3) Insofar as we are liable for damages on the merits in accordance with this provision, this liability shall be limited to damages which were foreseeable to us as a possible consequence of a breach of contract at the time of entering into the contract or which we should have foreseen if we had exercised due care. Apart from that, indirect damage and consequential damage from defects of the delivered items are only eligible for compensation insofar as such damage is typically to be expected in case of the delivered item being used for its intended purpose.
- (4) In the event of liability for simple negligence, our liability to pay compensation for damage to property and any further financial losses resulting therefrom shall be limited to the amount of the sum currently insured under our product liability insurance or third-party liability insurance policies even if it should constitute a breach of material contractual obligations.
- (5) The foregoing exclusions and limitations of liability shall apply to the same extent in favour of our executive bodies, our legal representatives, our employees and other agents.
- (6) Insofar as we provide any technical information or act in the capacity of a consultant and this information or consultancy services are outside of the scope of the contractually agreed services owed by us, these shall be provided free of charge and to the exclusion of any liability.
- (7) **Any liability on our part outside of the scope of the foregoing provisions shall be excluded regardless of the legal nature of the asserted claim unless we are liable according to the following provisions:**

- (7.1) Irrespective of the legal nature of the claims asserted, we shall have unlimited liability for damages towards the Customer insofar as such damages are attributable to intent or gross negligence on the part of our legal representatives or executive employees or to intent on the part of any other agents.
- (7.2) In addition, we shall have unlimited liability for damages towards the Customer for damages arising from injury to life, limb or health, from the assumption of a guarantee or a procurement risk or under the German Product Liability Act if we have fraudulently concealed a defect, or in the event of any initial incapacity or frustration for which we are responsible.
- (7.3) Furthermore, we shall be liable for damages arising from the breach of a material contractual obligation, i.e. an obligation the fulfilment of which makes the proper performance of the contract possible in the first place and on compliance which the contractual partner usually relies on and is also justified in relying on. In this case, liability shall be limited to compensation for any foreseeable damage which typically occurs.
- (7.4) We shall furthermore be liable for damage caused by any grossly negligent conduct of any other agents, with the liability likewise being limited to such damage as must typically be expected to occur within the scope of a contract of this type.
- (7.5) If any manufacturer's liability should be applicable notwithstanding the limitations of liability according to the foregoing paragraphs, this shall be limited to the insurer's compensation for any damage to property or any further financial losses resulting therefrom. This does not apply insofar as the insurance company fails to cover the damage or fails to cover it in full, in which case we shall be liable up to the sum insured.
- (7.6) Any exclusions or limitations of liability also apply, in each case, for the benefit of our employees or other agents in the event of the Customer taking any direct recourse against them.

§ 8 Retention of title

- (1) The retention of title agreed upon in the foregoing serves to secure any current and future claims against the Customer existing in our favour and arising from the delivery relationship between us, including any outstanding claims from a current account relationship which is limited to these delivery relationships.
- (2) The goods delivered by us shall remain our property until all secured claims in connection therewith have been paid in full. The goods as well as any goods subject to the retention of title taking their place according to this clause shall hereinafter be referred to as the goods subject to the retention of title.
- (3) The Customer shall store the goods subject to the retention of title for us free of charge.
- (4) The Customer shall have the right to process and sell the goods subject to the retention of title in the ordinary course of business until the event of realisation occurs. The goods subject to the retention of title may neither be pledged nor ceded as a security. Upon our request, the Customer shall be obliged to name the customers to whom they have resold the goods. The Customer shall only have the right to resell the goods subject to a retention of title if their customers either pay the full purchase price immediately upon transfer

of the object of purchase (pari passu) or if they also agree upon an effective retention of title with their customers.

- (5) It is agreed that any processing of the goods subject to a retention of title on the part of the Customer shall be carried out on our behalf and for our account as a manufacturer and that we shall immediately acquire ownership or - if the processing covers materials of multiple owners or the value of the processed item is higher than the value of the goods subject to the retention of title - co-ownership (fractional ownership) of the newly created item in the ratio between the value of the goods subject to a retention of title and the value of the newly created item. In the event that no such acquisition of ownership in our favour should occur, the Customer already now assigns their future right of ownership or co-ownership of the newly created item to us by way of a security in the aforementioned ratio. Should the goods subject to a retention of title be combined or inseparably mixed with other items to create a uniform item and should one of the other items be considered to be the main item, we shall - insofar as the main item is our property - transfer to the Customer a pro-rata right of co-ownership with regard to the uniform item in the ratio specified in sentence (1).
- (6) In the event of a resale of the goods subject to retention of title, the Customer hereby assigns to us the claim against the purchaser arising therefrom by way of a security, which assignment shall be on a pro-rata basis in accordance with the share of co-ownership in case we should have co-ownership of the goods subject to a retention of title. The same shall apply to other claims that take the place of the goods subject to a retention of title or otherwise arise with regard to the goods subject to a retention of title, such as insurance claims or claims in tort in the event of loss or destruction. We authorise the Customer to collect the claims assigned to us on their own behalf, subject to revocation by us. Revocation may only take place in the event of realisation.
- (7) If third parties access the goods subject to retention of title, in particular by way of garnishment, the Customer shall immediately notify them of our ownership and inform us about the fact of the garnishment in order to enable us to enforce our ownership rights. If the third party is not in a position to reimburse us for the court or out-of-court costs incurred in connection therewith, these costs shall be for the account of the Customer.
- (8) We shall release the goods subject to retention of title as well as the items or claims replacing them upon request at our discretion insofar as their value exceeds the amount of the secured claims by more than 50%.
- (9) If the Customer acts in breach of contract, in particular if they are in default with any payments due, we shall be entitled to withdraw from the contract in accordance with the applicable statutory provisions and/or to ask for surrender of the goods subject to a retention of title on the basis of our retention of title. Any demand for surrender does not automatically imply withdrawal from the contract, but rather that we are entitled to ask only for surrender of the goods, reserving the right to withdraw from the contract. If the Customer fails to make their payments as and when due, we may only assert these rights if we have previously set the Customer a reasonable deadline and this deadline has expired without success, or if setting such a deadline can be dispensed with under the statutory provisions. In addition, we shall be entitled to ask the Customer for compensation for the damage incurred.

- (10) In asserting a claim for surrender, we shall have the right to enter the Customer's land, premises and buildings, to take possession of our property and to transfer it or have it transferred to another location.
- (11) The Customer shall be obliged to provide us with information concerning the whereabouts of the goods subject to a retention of title and on the claims arising from any resale at any time.
- (12) Should the retention of title agreed upon in accordance with the preceding provisions not be fully recognized under the law of the country in which the goods subject to a retention of title are located, the Customer shall be obliged to inform us of this fact upon entering into the contract. In such a case, in lieu of the retention of title agreed upon here, the security which comes closest to it in economic terms shall be deemed to have been agreed upon. If additional conditions have to be created for this purpose or if measures on the part of the Customer (such as declarations or measures for the purpose of compliance with formal requirements) are required in this context, the Customer undertakes to take all such measures or to cooperate in the creation of such conditions upon our request.

§ 9 Final provisions

- (1) The place of jurisdiction for any disputes arising from the business relationship between us and the Customer shall be - at our discretion - either Velbert or the registered office of the Customer. For any legal action taken against us, Velbert shall be the exclusive place of jurisdiction. Any mandatory statutory provisions concerning the exclusive place of jurisdiction shall remain unaffected by this provision.
- (2) Legal relations between us and the Customer shall be exclusively governed by the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.
- (3) Insofar as the contract or the present GTC should contain any loopholes, those loopholes shall be considered to have been filled by such legally valid provisions which the Parties would have agreed upon in accordance with the economic purpose of the contract and the purpose of these GTC if they had been aware of this loophole.