

# Terms of Delivery, Sale and Payment

## 1. Scope of Applicability

- 1.1 The present Terms of Delivery and Payment shall apply in relation to businesses as defined by §14 BGB (Civil Code)
- 1.2 We will provide our goods and services exclusively on the basis of the applicability of the present Terms of Delivery and Payment. Any other contradicting or differing terms by the customer will not be recognized by us unless we have expressly consented to their applicability.

## 2. Offers and Orders

- 2.1 An offer by us will not be binding and will be subject to change unless explicitly defined as a binding offer.
- 2.2 Our written order confirmation will be authoritative for the order. Where the customer objects to the contents of the order confirmation he must lodge objections immediately, otherwise the contract will be concluded in accordance with the order confirmation.
- 2.3 The information, drawings, illustrations and feature specifications in catalogs, price lists, prospectuses or documents belonging to the offer are to be regarded as approximate values customary in the business unless they are explicitly defined by us as binding.
- 2.4 We reserve the right to make changes to the design of the product. However, we are not obligated to implement such changes on products which have already been delivered.

## 3. Prices

- 3.1 Our prices are to be regarded as net ex works and do not include packaging, shipping, postage, insurance, customs duty or value added tax.
- 3.2 The prices specified in the order confirmation will apply.

## 4. Terms of Payment

- 4.1 Unless otherwise agreed, the net sum quoted on our invoice must be paid without deduction within ten days as from the date of the invoice.
- 4.2 Bills of exchange and checks will only be accepted for the purpose of payment on the basis of express agreement. Discounts, charges and other costs are to be borne by the customer. Payment per bill of exchange will exclude the deduction of discount.
- 4.3 The customer may only set off claims with a counterclaim which is uncontested or res judicata. Assertion of a right to retention by the customer is only permissible if it is based on the same contractual relationship.

## 5. Delivery/Passing of Risk

- 5.1 Irregardless of whether there is a formal acceptance of the goods in the individual case, the legal consequences for the due date of the payment, passing of risk or guarantee and commencement of the expiry period will be based on the statutory regulations as set out in §851 BGB (Civil Code).
- 5.2 The risk of accidental destruction or deterioration of the goods will pass to the customer upon the handing over, shipping or delivery of the item to the transport person.
- 5.3 Where we choose the mode of shipping, shipping route or shipper we will only be liable for gross negligence.
- 5.4 We have the right to make partial deliveries to a reasonable extent and to charge these separately.

## 6. Delayed Delivery

- 6.1 The customer can only rescind the contract due to delayed delivery if he has set an adequate period of grace for us beforehand with a warning to refuse the goods and the delivery is not made within said period of grace. This will not apply where stipulation of a deadline is indispensable pursuant to §323 Sect. 2 BGB.
- 6.2 Should delivery by us be delayed we will only be liable for the damage caused by the delay proven by the customer in the case of gross negligence. In the case of minor negligence, our liability for the damage due to the delay will be limited to compensation of 0.5% for each full week of the delay, but maximum total 5% of the price of the portion of the delivery batch which was unable to be properly deployed due to the delay. Moreover, in the case of minor negligence, we will only be liable starting from the date on which the period of grace stipulated by the customer has expired. The aforementioned maximum amounts for damage caused by delay will not release the customer from having to furnish proof that damage was incurred by the delay and the extent of the damage.

## 7. Retention of Title

- 7.1 We will reserve the ownership to all goods delivered by us until complete payment of all obligations from previous contracts. The claims include claims from checks and bills of exchange and current invoicing claims. Where liability for us arises from bills of exchange in connection with payment, the retention of title will not expire before our liability on the basis of the bill of exchange has been excluded.
- 7.2 Where the customer is in arrears with payment or where it becomes clear that our payment claims are jeopardized by the customer's inability to deliver the goods we will have the right to demand return of the goods on the basis of the retention of title. Rescission of the contract will not be the prerequisite for the demand to return the goods.
- 7.3 Subject to the proviso of revocation permissible on a relevant ground, the customer will have the right to dispose of the delivered goods within the framework of a proper business transaction. In the case of re-sale of the goods, the customer hereby assigns all claims from the re-sale, in particular payment claims but also all other claims in connection with the sale to the amount of the total on the invoice (including value added tax). This will apply irregardless of whether the delivered item was re-sold in an unprocessed or processed form. The processing or treatment of goods delivered by us to which we still retain the title will always be carried out upon our orders, without incurring any obligations to us.

Until an admissible revocation is declared by us on a relevant ground, the customer will have the right to collect the assigned claims on a trust basis. We will have the right to disclose the assignment of the claim to third party debtors also in the name of the customer on a relevant ground. The customer's collection right will expire upon notification of the assignment to the third party debtor. In the case of revocation of the collection right we can demand that the customer disclose the assigned claims and debts to us, provide all necessary information for collection of the debts, submit the corresponding documents and inform the debtors of the assignment.

## 8. Complaints Due to Defective Goods

- 8.1 The customer is obligated to inspect each delivery batch immediately upon acceptance or receipt with regard to completeness and damage to the packaging. Any complaints are to be sent to us immediately. The transport person will be obligated to record the findings.
- 8.2 The customer is obligated to inspect the goods immediately after receipt irregardless of any agreed subsequent inspection and to immediately lodge a written complaint with us, citing any visible defects. A complaint regarding hidden defects must be made in writing immediately after their detection.
- 8.3 Where the goods are delivered to a buyer of the customer, the customer must ensure that the aforementioned duties are also complied with by the buyer.

## 9. Material Defects

- 9.1 Where the goods have a defect for which we are liable, we will have the right to choose to either rectify the defect or to provide a defect-free replacement as a way of compensating the defective performance of the contract. Where we refuse to make up for the defective performance of the contract or where we fail to do so or where it is unacceptable to the customer, the customer can choose to rescind the contract or demand reduction of the purchase price.
- 9.2 A guarantee for the features of an item or for its durability will only be assumed by way of a written guarantee by us stating the nature and extent of the guarantees. Any other guarantees will be regarded as mere feature specifications.
- 9.3 Where a defect is detected by the customer and/or customer's buyer, the customer will be obligated to immediately report the nature and extent of the defect. In the case of any rectification attempts by the customer or by third parties we will be exempted from our guarantee duties.
- 9.4 The customer must inform us of all crucial circumstances of the damage incident such as the nature and extent of the operation of the unit, type of media temperatures and send us any documentation available.
- 9.5 Where there is a disagreement regarding the existence and extent of a defect or as to whether the defect was already present upon the passing of risk, we will have the right to commission the TÜV Südwest as an arbitrating expert. The findings made by TÜV will be binding. Should it turn out that we are liable for the defect, we will be obligated to bear the costs of commissioning the expert; should this not be the case, they will be borne by the customer.
- 9.6 We will not be liable for the financial and technical success of the products even where advisory discussions preceded the placement of the order. The customer himself must check the suitability of the compensators for the purpose intended by him.
- 9.7 We are not obligated to inspect the products of the manufacturer or customer with regard to suitability and flawlessness. We will not be liable for any defects of the delivered products originating from external plants or external influence.
- 9.8 The customer's claims on the basis of defects expire 12 months from the date of delivery or rendering of the service. This will not apply where the law prescribes longer periods in the case of fraudulent intent or recourse against the entrepreneur.

## 10. Damages

- 10.1 We will not be liable in the case of intent and gross negligence. In the case of minor negligence we will only be liable where there is a violation of cardinal contractual duties arising from the nature of the contract or the violation of which would jeopardize achievement of the contractual purpose. Even in this case, damages will be limited to typical, foreseeable damage. In other respects, in the case of minor negligence, damage compensation claims by the customer, irregardless of their legal ground and including claims from pre-contractual duties, positive breach of contract or inadmissible actions are excluded.
- 10.2 The aforementioned limitation of liability will not apply to claims arising from the Product Liability Act, in the case of injury to life, limb or health.
- 10.3 In the case of damage compensation claims due to material defects, the limitation of liability will additionally not apply where we maliciously concealed a defect or effectively assumed a guarantee for the features of the product. The provision set out in 9.7 will apply accordingly to the expiry of damage compensation claims on the basis of material defects.

## 11. Place of Performance, Place of Jurisdiction, Applicable Law

- 11.1 The place of performance for delivery and payment and for all other duties arising from the delivery contract is Seligenstadt for both parties.
- 11.2 The place of jurisdiction for all disputes arising from the contract as well as regarding its formation and validity is Frankfurt for both parties in the case of businessmen. We can also opt to file suit at the customer's domicile.
- 11.3 The contract is subject to German law.