

# General Terms and Conditions of Business

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## § 1 Validity of these provisions

1. Our goods and services shall be offered and supplied on these General Terms and Conditions of Business exclusively. They therefore apply to all future business relationships even if they have not been expressly agreed again. The customer shall be deemed to have declared his agreement to these General Terms by accepting our offer.

If the customer accepts our offer on any different terms, our General Terms shall still apply exclusively even if we raise no objection. Deviations thus only apply if we have expressly accepted them in writing. If the customer is not in agreement with these arrangements he shall point this fact out expressly in a separate letter. In any such event we reserve the right to withdraw the offer without any possibility of claims of any kind whatsoever being raised against us.

2. Our General Terms shall also apply if we supply goods and/or services to the customer without reservation even though we are aware of any terms of the customer that contradict or deviate from our General Terms.

## § 2 Offers and contracts

1. Our offers are free and non-binding. Declarations of acceptance of the placement of any orders shall only furnish valid proof if we have confirmed them in writing or by telefax. The same shall apply to additions, alterations, or ancillary agreements. The confirmation shall be issued with the submission of the invoice at the latest.

2. We reserve the right to an acceptance period of 4 weeks.

3. Drawings, illustrations, measurements, weights, and other output data can be changed in response to operational requirements to the necessary extent provided this has no negative impact on the value of our goods. Such changes shall only be impossible if the factor concerned has been specifically identified as binding.

4. We shall retain ownership and copyright over illustrations, drawings, costings, cost estimates, and other documentation, and these shall not be made accessible to any third party. This shall in particular apply to such documentation as is identified as "confidential". The customer shall not pass them on to any third party without our express consent.

Illustrations, drawings, and other documentation pertaining to offers shall be returned to us without delay on request if the order is not placed with us.

5. We reserve the right to correct and recalculate obvious errors and deviations in price lists, invoices, and confirmations. The customer shall bear the risk of transmission errors.

6. If the customer has to supply documentation such as drawings, samples, models, or similar, the customer shall bear liability for ensuring that they are correct, technically feasible, and complete; we shall not be under any obligation to check them. The customer shall also bear liability for ensuring that no third party's rights are violated by the use of such documentation, and shall absolve us and hold us harmless from any disadvantages that could accrue to use through any such violation.

## § 3 Extent of the obligation to deliver

1. Our written confirmation of order, if issued, shall be decisive for the content and quantity of the goods and/or services that we are to deliver. We shall be entitled, however, to make use of a technical design or

a material deviating from the order confirmation, without discussing the point with the customer, provided this does not result in any deterioration of the goods and/or services.

2. Protective devices shall be delivered with the goods to the extent that these are statutorily prescribed or expressly agreed. The customer shall be under an obligation to inform us of the regulations on environmental protection and accident prevention in force at the place of installation. The price shall be deemed not to include the cost of such devices unless anything to the contrary is stated in the confirmation of order. The customer shall be responsible for ensuring adherence to the regulations on environmental protection and accident prevention in force at the place of installation.

#### **§ 4 Prices / terms of payment**

1. In the absence of any separate agreement to the contrary, our prices shall apply "ex-works" including loading onto a vehicle at our works but not including packing.

2. Our prices do not include the statutory Value Added Tax, which shall be added at the statutory rate in force on the date of invoice and shown separately in the invoice.

3. The customer shall bear all costs associated with transportation, including insurance.

4. In the absence of any agreement to the contrary, payment shall be made in cash net of any deduction free at our place of payment.

5. Cheques can be accepted, and bills-of-exchange if already so agreed, as facilitation of payment. Discounting and collection charges shall be reimbursed to us without delay. The day on which we have free access to the amount shall be deemed to be the day of performance in all cases.

6. Should the customer fall into arrears of payment, we shall be entitled to charge annual interest on the arrears at a rate 4 percentage points above the basic annual interest rate of the European Central Bank or any comparable successor interest rate. If we are able to demonstrate that we have suffered any greater loss through the arrears we shall be entitled to make the corresponding claim. The customer shall be entitled, however, to demonstrate to us that we have suffered no loss or a substantially smaller loss as a result of the arrears of payment.

7. Should the customer fall into arrears with any payment or part thereof, we shall be entitled to require the provision of bank collateral for the amount of the account that is still receivable. If the customer falls into arrears in providing any such collateral, we shall be entitled, after setting a period of grace and threatening refusal, to refuse to execute the contract and to claim damages on the grounds of non-fulfilment.

The provisions of sentences 1 and 2 above shall also apply if compulsory enforcement is imposed on the customer's assets, the customer ceases to make payments, or if he applies for the compounding of debts or a moratorium.

8. The customer shall not be entitled to any right of offset unless his counter-claims have been established by a court, are undisputed or acknowledged by us.

9. The customer shall bear all taxes, fees, and other charges incurred outside the Federal Republic of Germany. The customer shall also ensure that he obtains at his own expense all necessary forms of official authorisation, meaning import licences in particular.

10. A low-quantity surcharge of € 15,- shall apply for orders under € 25,-.

#### **§ 5 Delivery period**

1. The delivery period shall be set by mutual agreement. Unless anything to the contrary has been agreed, it shall start on the date on which the order is confirmed but in no case before the documentation and data that the customer is to provide and the approval that he has to give have been received, as well as any instalment payment, and he has met any other agreed obligations.

2. The delivery date shall be deemed to have been met if the goods on order have left the works by that date or the customer has been informed that they are ready for collection.

3. We reserve the right to deliver the goods correctly and promptly ourselves.
4. The delivery period shall be extended, even if delivery is already in arrears, by an appropriate length of time if any unforeseeable impediment occurs that we could not avert even with all the circumspection called for in the circumstances of the case. It shall make no difference here whether the impediment occurs in our works or in the works of any of our suppliers. Impediments within the meaning of the foregoing sentences shall include, for instance, interruptions to operations, intervention by the authorities, difficulties with energy supplies, delays in the delivery of essential raw and construction materials, strikes and lockouts, mobilisation, warfare, riots, terrorist attacks, and diseases. The customer shall be informed without delay of the beginning and end of any such impediments.
5. If the consequence of any events such as those described in sub-clause 5.4 above is that supply becomes substantially more difficult or impossible for us or for our sub-suppliers, we shall be entitled to cancel the contract. The customer shall be entitled to require us to inform him whether we will be able to deliver within a reasonable length of time or intend to cancel the contract. If we fail to make any such declaration the customer can cancel the contract. Neither party shall have any claim for damages against the other in any such case.
6. Should the customer suffer any loss on account of a delay culpably caused by us, he shall be entitled to require compensation for arrears to the exclusion of any further claims. The foregoing shall have no impact on our right to cancel the contract under sub-clause 10.3 of these General Terms. The compensation for arrears shall amount to 0.5 percent of the value of that part of the goods and/or services that on account of the delay cannot be used on time, or not in compliance with the contract, for each full week of arrears after the expiry of a 2-month period of grace, subject to a cumulative maximum of 5 percent. If one of our legally authorised representatives or senior staff can be charged with having acted with intent or in gross negligence, the liability that we bear shall be unlimited.
7. If despatch is postponed at the customer's request, he shall be charged for all resultant costs for the storage of the goods on our premises, starting one month after the notification that the goods are ready for despatch and subject to a maximum limit of 0.5 percent of the invoice amount, for each month or part thereof. We shall be entitled, if we set a reasonable extension period that expires without effect, to make other use of the goods and to supply the customer within a reasonably extended delivery period.

## **§ 6 Acceptance of goods supplied**

1. The customer shall accept the goods supplied, even if they display insignificant defects, without prejudice to his rights under Clause 8 below.
2. We shall be entitled to deliver part-consignments within reasonable bounds.

## **§ 7 Transfer of risk**

1. Risk shall be transferred to the customer when the parts are despatched at the latest even if part-consignments are being delivered as defined in Clause 6 above or we have undertaken to provide other services such as bearing the costs of despatch, delivery, or installation.
2. We shall be entitled to deliver part-consignments within reasonable bounds.
3. If despatch is delayed as a result of circumstances for which we are not responsible, risk shall be transferred to the customer on the date on which he is notified that the goods are ready for despatch. We shall be under an obligation, however, if the customer so requests to arrange insurance at his expense in the form in which he requires it. If he makes no such request, we shall be entitled to insure the goods at the customer's expense in the place and from the point in time onwards at which risk is transferred to him.

## **§ 8 Guarantee liability for defects and deficiencies**

FüWe shall bear liability for defects and deficiencies to the exclusion of any further claims and without prejudice to any right the customer may have under these General Terms to cancel the contract (see sub-clause 10.4 below).

1. We shall bear guarantee liability for defects and deficiencies in the goods we supply only to the extent that they arise during the correct and proper use of the goods and under the operating conditions prescribed for them and are caused by circumstances occurring prior to the transfer of risk, in particular for faulty design or defective workmanship. Defects or damage caused by improper treatment, tampering, unauthorised alterations, or the incorrect installation of the goods by the customer or any third party shall be excluded from the guarantee liability. The same shall apply to defects and damage caused by excessive loads, unsuitable operating material, imperfect building activities, unsuitable foundations, or any chemical, electro-chemical, or electrical factors not provided for in the contract.
2. The customer's guarantee rights shall be subject to the proviso that he has fulfilled his obligations properly under Articles 377 and 378 of the [German] Code of Commercial Law in examining the goods and raising any complaint. In any case the customer shall notify us in writing of any obvious defects within two weeks of accepting the goods or services and of any hidden defects within two weeks of their coming to light. If the customer fails to fulfil the foregoing obligations, all his guarantee rights shall become forfeit with regard to defects over which no complaint has been raised.
3. If a defect has been identified for which we are responsible, we shall be entitled at our discretion to rectify it or to supply replacement goods. In the event of rectification, we shall bear no costs over and above the purchase price. We shall likewise bear no costs that arise as a result of the goods having been taken to some other place than the place of execution. If the rectification work or the replacement of the goods fails to achieve the desired result, the customer shall be entitled at his discretion cancel the sale or to require a reduction in the purchase price. Replaced parts shall revert to our ownership. If any complaint should prove to be unjustified, the customer shall bear all the costs we thus incur.
4. The customer shall provide sufficient time and opportunity for the rework or the replacement delivery as appears necessary in fair judgement. Should he fail to do so, we shall be released from our guarantee liability. The customer shall have no right to rectify the defect himself, or to arrange for a third party to do so, and to request us to reimburse the resultant costs, except in cases in which operational safety is endangered and/or if such action is necessary in order to avert disproportionately greater damage. In any such event he shall notify us immediately of the nature and extent of the defect.
5. The customer shall have no claims over and above the foregoing, and in particular no claim for damages that have not arisen from the goods or services themselves that we have supplied. This restriction of liability shall not apply if any of our directors or senior staff or any of our vicarious agents has acted with intent or in gross negligence.
6. In the absence of any specific agreement to the contrary, the guarantee period shall be 12 months counting from the date of the transfer of risk.
7. The terms set out above shall also apply if any rework or replacement parts prove to be defective.
8. All guarantee claims shall be ruled out if the goods supplied were not newly manufactured or the service provided was not newly rendered.

#### **§ 9 Other claims for damages**

1. There shall be no liability for damages over and above the foregoing provisions, regardless of the legal nature of any claim that may be raised. The foregoing shall also apply to claims for damages under *culpa in contrahendo*, positive violation of contract, or minimal claims.
2. The provisions of sub-clause 9.1 above shall not apply to claims under Articles 1 or 4 of the [German] Product Liability Act, nor to cases of inability or impossibility.
3. The exclusion of liability for other claims for damages shall not apply if any of our directors or senior staff or any of our vicarious agents has acted with intent or in gross negligence. The exclusion of liability shall likewise not apply if we have covered the loss by insuring our statutory liability.

#### **§ 10 Customer's right to cancel the contract**

1. The customer can cancel the contract if, prior to the transfer of risk, it becomes finally impossible for us to deliver the entirety of the goods ordered. The customer can also cancel the contract if it becomes impossible to supply the whole number of similar goods and and he has a legitimate interest in refusing a

part-consignment; if this is not the case, the customer shall be entitled to reduce the consideration accordingly.

2. If the situation of impossibility arises during arrears of acceptance or from circumstances for which the customer is responsible, he shall still be under the obligation of consideration.

3. If we fall into arrears of performance the customer shall be entitled to set us a suitable extension period and declare expressly that he will refuse to accept the goods and/or services if this extension period expires to no avail. If it does so expire, the customer shall be entitled to cancel the contract.

4. The customer shall also be entitled to cancel the contract if we allow a reasonable extension period that has been granted to us to expire to no avail for the rework or replacement of parts that are defective for reasons for which we are responsible. The customer's right of cancellation shall also exist in other cases in which attempts at rework or replacement have proved fruitless.

5. The customer shall only have the right to declare the cancellation of the contract if his interest in the goods and/or services is seriously diminished. Such loss of interest shall not be deemed to be serious if the customer continues to make use of the goods and/or services.

### **§ 11 Retention of title**

1. All the goods and material that we supply shall remain our property until all outstanding accounts have been settled in full including ancillary accounts, claims for damages, and the clearing of cheques and bills-of-exchange. This retention of title shall remain in force even if we include individual accounts receivable in a current account and the balance has been struck and acknowledged.

2. The foregoing shall also apply to export deliveries within the meaning of sub-clause 4.6 above. If the statutory regulations of the destination country do not permit retention of title in the form described above, the customer shall be under an obligation to provide collateral of the same value for all accounts receivable from him.

33. If we have given our consent at the time of entering into the contract to the customer assigning title over the goods and material that we are to supply to a third party who is financing the purchase by providing a loan or in any other way as collateral for these financial facilities, the customer shall be deemed to be transferring to us here and now his entitlement *in rem* to the objects delivered in the event of our account receivable from him not yet having been settled in full at the point in time when the third party providing the finance has to release the collateral title. The entitlement *in rem* shall be of such an extent that the objects delivered revert to the retained title to secure the balance of our receivable account.

4. The customer shall be under an obligation to co-operate in any measures that we take to protect our property or comparable rights in lieu over the objects delivered. He shall not be permitted to pledge the objects delivered, nor to assign title as collateral. In the event of their being attached, confiscated, or otherwise disposed over by third parties, the customer shall inform us without delay and shall send us copies of the relevant disposal documents.

5. We shall be entitled to ensure the objects delivered, at the customer's expense, against theft and damage by fire, water, or any other factor, unless the customer can show that he has taken out such insurance himself. In the event of the customer taking out the insurance, we shall be entitled to check that the insurance cover is adequate by enquiring from the insurance company concerned.

6. In the event of the customer violating the contract, meaning in particular if he falls into arrears of payment or culpably allows the deterioration of the object delivered, we shall be entitled, after issuing a warning, to take the object back and the customer shall be under an obligation to surrender it. Neither the raising of our claim to retention of title nor any attachment of the object delivered shall be construed as cancellation of the contract.

7. As long as the object delivered is still under our retention of title, the customer shall not be entitled to resell it without our consent. If we have given our consent, the customer shall inform the relevant third parties of our retention of title. He shall not sell the object without sustaining the retention of title.

### **§ 12 Place of execution**

The place of execution for all obligations under this contractual relationship shall be our place of business in Bergisch Gladbach.

### **§ 13 Venue**

The venue for all legal disputes that may arise out of the contractual relationship, including its creation and validity, and including disputes over cheques and bills-of-exchange, shall be the court geographically responsible for our place of business. However, we shall reserve the right to raise an action before any competent court including the one geographically responsible for the customer's head office.

### **§ 14 Applicable law**

The contractual relationship shall be subject to the laws of the Federal Republic of Germany to the exclusion of the uniform law on the purchase of goods. Our terms of supply shall be augmented by INCOTERMS and the regulations for the uniform interpretation of contractual clauses issued by the International Chamber of Commerce in Paris as most recently revised at the material point in time. If a contract text in German and one in any other language are used simultaneously, the German version shall always be decisive.

### **§ 15 Partial invalidity**

The invalidity of any individual provisions of these General Terms shall not result in the invalidity of the contract as a whole or of the other provisions contained in it. The contracting partners shall be under a mutual obligation to find a provision that comes as close as possible to the invalid one in terms of its commercial effect.