

## **Sommer & Strassburger GmbH**

10/2023

### **General delivery conditions – standard sale –**

#### **1. General**

- (1) Our deliveries and services are performed exclusively on the basis of the following conditions. Deviating, opposing or supplementary general terms and conditions of the buyer only become an element of the contract when and insofar as we explicitly consent to their application. This requirement for consent applies in all cases, even if we make deliveries to the buyer in knowledge of their general terms and conditions and without objection. We explicitly reject any deviating clause in a customer order. Delivery without objection or the confirmation of an order without explicit objection do not represent acceptance of such clauses, which remain ineffective even if the buyer considers that such actions imply acceptance of their general terms and conditions.
- (2) We also do not accept any nomenclature relating to quality assurance on the part of the buyer or other regulations that apply to the buyer, for example the general terms and conditions of their end customers in their current or any amended versions. We do not recognise any special right to cancellation on the part of the buyer or any right of the buyer to access our documentation. The buyer also has no right to inspect our business premises or to impose requirements with regard to the effective execution of our working processes.
- (3) In particular, we do not agree to any statements presented as statements on our part in any contractual conditions of the buyer. We do not give any assurances beyond the immediate subject of the contract and explicitly reject any terms and conditions to the contrary on the part of the buyer. In particular, we do not make any statements regarding our subcontractors. We do not accept any private regulations, foreign laws or other codifications or laws.
- (4) The contractual agreements we reach with subcontractors relevant to deliveries that are the subject of the contract are also only applicable to the extent that the fulfilment of responsibilities that are the subject of the contract is possible under their general terms and conditions and any special conditions imposed.
- (5) The claims of the buyer under this contract can only be transferred with our written agreement. We hereby explicitly reject any prohibition of transfer on the part of the buyer.

#### **2. Conclusion of the contract**

- (1) Our offering is subject to change and non-binding, insofar as the order confirmation does not state anything to the contrary or we have not explicitly declared anything to the contrary.
- (2) A contract is only concluded when you receive written agreement from us in the form of an order confirmation. The content of the contract, particularly with regard to the type and scope of delivery, is exclusively determined by the order confirmation.
- (3) An order for goods on the part of the buyer is a binding contractual offer. Insofar as the order does not state anything to the contrary, we may accept the offer within two weeks of its receipt. That acceptance can be in writing (e.g. in the form of an order confirmation) or take the form of delivery of the goods to the buyer.

- (4) If our order confirmation deviates from the offer or the order, our written order confirmation is decisive insofar as it is not rejected within ten days of date on which the order confirmation was sent.
- (5) Subsequent changes to the order confirmation requested by the buyer only become content of the contract when we have confirmed them in writing and, where applicable, any necessary increase in the purchase price has been agreed. We can change the content of the contract insofar as it does not involve a technical reduction.
- (6) If a delivery is delayed as a result of changes to the original order that are requested by the buyer, any costs will be borne by the buyer. The same applies if the buyer fails in their obligation to provide any data required for the manufacture or configuration of the item to be delivered in the agreed form or does not fulfil this obligation in a timely manner, or if such data is defective and requires reworking. If that results in a production stoppage, then the buyer has an obligation to refund costs resulting from the stoppage.
- (7) If the item to be delivered is produced in series or is primarily determined by its number, dimensions or weight, then over- or under-deliveries of 5 % and, depending on the item to be delivered, of 10 % are included in the will of the contracting parties.
- (8) If, after conclusion of the contract, it becomes clear that entitlement to the purchase price is put in jeopardy by insufficient performance on the part of the buyer (e.g. by an application for the opening of insolvency proceedings), then the legal right to withhold services and – where applicable, after setting a deadline for payment – to rescind the contract applies (Section 321 German Civil Code (BGB)). In the case of contracts for the manufacture of specific items (custom manufacturing), we may rescind the contract immediately; the statutory regulations regarding the necessity of setting a deadline are not affected.

### **3. Prices/payment**

- (1) Prices apply ex-factory, including loading at the factory, but excluding packaging, freight, customs, insurance and unloading costs, which are billed separately. The minimum order value is € 1.500,--. Orders below this amount will be charged a handling fee. Value added tax at the respective legally applicable rate will be added to the price. If there is a significant change in the costs relating to the order following the conclusion of the contract, then we may unilaterally impose a proportional price increase. We are not responsible for the selection of the most economical means of shipping.
- (2) Price reductions on the part of the buyer will be rejected. In particular, price reductions relating to previous orders or our suggested prices will be rejected. If the buyer makes reference to a price reduction that is not reflected by an explicit offer on our part, we may rescind a concluded contract at any time. In such cases, the buyer is liable for damages resulting from the non-fulfilment based on the higher price offered by us.
- (3) Price lists are only binding to the extent that reference is made to them in our order confirmation.
- (4) Or invoices are payable within 10 days of the invoice date, without deductions. Payment must be made so that the sum paid is available to us on the due date. If payment is not received by the due date, the buyer is in arrears without receiving a further demand for payment.
- (5) If a delivery is divided into a number of partial deliveries, then the overall delivery may be billed and is payable insofar as the remaining part of the overall delivery is not significant. That is generally the case if it does not make up more than 20 % of the value of the

whole delivery. Partial deliveries may also be billed by means of partial invoices if the amount to be billed is at least 5 % of the total price. Insofar as the order confirmation stipulates partial deliveries, a partial invoice may also be issued if it is for at least half the volume of one of the partial deliveries stipulated in the order confirmation.

- (6) Insofar as our payment claim is endangered by subsequent circumstances resulting in a significant deterioration in the buyer's financial situation, we are entitled to set a due date, irrespective of the term of any bill of exchange accepted as payment.
- (7) If the buyer is in arrears, then the overdue payment is subject to interest at the statutory rate of interest on arrears, regardless of the current base rate and of at least 9 % p.a. The right to default interest is not affected.
- (8) The buyer's terms of repayment are not binding. In particular, we may allocate payment to older debts regardless of any requirements to the contrary on the part of the buyer. If costs and interest have arisen due to arrears, then we may use payments to pay costs, then interest and finally the primary claim. We may also allocate such payments in any other way we consider appropriate. If we do not accept the buyer's terms of repayment, we are not required to return payments, but may allocate them as described above as we see fit. We may also allocate payments to ongoing claims past the statute of limitations, unless it is legally determined that they do not apply or are not enforceable.
- (9) The buyer only has the right to offset or withhold payment if a claim has been legally determined or explicitly recognised by us. Our right to make subsequent outstanding fulfilment dependent on payment of the purchase price due is not affected.
- (10) Bills of exchange and cheques are only accepted for the purposes of fulfilment if we have given our explicit agreement with regard to a specific individual payment.

#### **4. Deduction of discounts**

- (1) Discounts only apply to advance payments and/or in general if we have agreed a discount in our written order confirmation. A discount noted in an order does not apply, even if we make delivery without objection or do not object to the deduction of the discount.
- (2) The deadlines for time-restricted discounts are always based on the date shown on our invoice, even if the invoice is sent or received with a significant delay. That is also the case if the deadline for a discount has passed when the invoice is received.
- (3) The deadline for a discount is only met if the sum paid is available to us before the deadline. If we accept a cheque as fulfilment, then the deadline for a discount is only met if the cheque is received at least three bank working days before the deadline, and insofar as the cheque is successfully redeemed.
- (4) If a buyer is in arrears, then the right to a discount for any payments that become due while they are in arrears lapses, regardless of which orders they relate to.
- (5) Unspoken agreements regarding the extension of deadlines for discounts or amendments to the preceding arrangements regarding the right to a discount are excluded. Deviating arrangements do not come into existence through application over a number of years. Even if we do not object to an unjustified discount over a considerable period, or relating to a considerable quantity of deliveries, we only fail to assert our claim to reverse the discount provisionally, and our right to assert such a claim is not affected.

- (6) All other regulations regarding arrears are not affected and apply to subsequent claims to unjustified discounts from the date of receipt of a reduced invoice payment.
- (7) The right to subsequent repayment of unjustified discounts is subject to the statute of limitations with the sole difference that the period is five rather than three years.

## **5. Collateral**

- (1) We have a right to collateral of the normal type and scope for our claims, including when they are conditional or limited. In particular, we may demand that the buyer provide a bank guarantee from a major German bank. If we do not receive such a bank guarantee two weeks after it is requested, then we may rescind the contract.
- (2) If the buyer's financial situation deteriorates, or its performance is impaired, following the conclusion of the contract, or we become aware of such a situation after the conclusion of the contract without us being unaware of it due to gross negligence when the contract was concluded, then, notwithstanding other rights, we have the right to demand collateral for all unpaid purchase price claims, regardless of whether they are due or not, or – insofar as collateral has already been provided – to demand further collateral. The total value of the collateral may not exceed the outstanding claim plus 20 %.
- (3) The collateral we may request is at our reasonable discretion. The buyer irrevocably authorises us to provide all collateral that can be granted without the requirement for a specific form or in writing, by means of a declaration on our part in their name. We are authorised to issue such declarations – externally without limit. In particular, that gives us the right to conclude contracts that result in an obligation on the part of third parties towards the buyer to conclude guarantee contracts with us in their own name. We are released from the restrictions of Section 181 German Civil Code (BGB). We are obliged to conclude such collateral agreement in the name of the buyer so that its economic performance is maintained to the greatest possible extent. That mandate also allows us to conclude external legal transactions of all types, including any required enforcement.
- (4) Paragraph (2) also applies if a legally respected credit rating company gives the buyer a significantly lower rating than at the time when the contract was concluded, or if, in the view of such a company, there is a negative indicator, even if the lower rating or circumstances leading to the negative indicator were already in place and known to us at the time when the contract was concluded.

## **6. Delivery**

- (1) Delivery periods begin on the date of our order confirmation, but not before full clarification of all the details of the order and the fulfilment of all other requirements on the part of the buyer; the same applies to delivery dates. Delivery periods and delivery times are only binding on our part if we have explicitly confirmed them as obligatory for us in our order confirmation.
- (2) The date of delivery is the date on which we notify the buyer that the order is ready for dispatch or we have dispatched the item to be delivered.
- (3) Delivery before the end of the delivery time and partial deliveries are permissible.
- (4) If the buyer is late in meeting their obligations, then agreed delivery periods and dates are extended or postponed by the length of such a delay without affecting our rights. If acceptance is delayed or the buyer culpably infringes other duties to cooperate, then we have the right to demand the resulting damages including any additional costs. In such

cases, the danger of accidental loss or of accidental degradation of the item purchased is transferred to the buyer at the time when acceptance is delayed.

- (5) If the buyer is in arrears with regard to one or more payments, we have the right to stop all deliveries to them, even if they relate to orders for which their obligations have been met in a timely manner. They may only demand further deliveries if they make the respective payments in advance. The agreed discount will not be applied in such cases.
- (6) If we are unable to comply with binding delivery periods for reasons that are beyond our control (unavailability of the service), we will inform the buyer immediately and provide an expected new delivery period. If the service remains unavailable during the new delivery period, we have the right to wholly or partially rescind the contract. In particular, the failure of our suppliers to supply us in a timely manner when we have concluded a congruent covering transaction represents the unavailability of a service in this sense. Our statutory rights of rescission and termination and the regulations regarding the fulfillment of the contract in the case of the exclusion of the obligation to perform (e.g. impossibility or unreasonableness of performance and/or subsequent performance) are not affected.
- (7) The occurrence of a delay to delivery on our part is determined in accordance with the applicable regulations. A reminder on the part of the buyer is required in all cases, even if the delivery was expected at a certain time. If delivery is delayed, the buyer may demand flat rate compensation for damage caused by the delay. The flat-rate compensation is 0.5 % of the net price (delivery value) for each full calendar week of the delay, but no more than 5 % of the total value of the goods subject to delayed delivery. We reserve the right to prove that the buyer has not suffered any loss or a significantly lower loss than the above flat rate. Damages greater than the amount stipulated generally cannot be compensated. Damages resulting from the failure of the buyer to meet their delivery obligations to third parties as a result of the delayed delivery also cannot be compensated. The buyer shall undertake to arrange their obligations to third parties so that they have sufficient time to make deliveries in a timely manner even in the case of delayed delivery. Contractual penalty claims are excluded unless explicitly accepted in our written order confirmation. In other cases, the possibility of such claims is not accepted, even through delivery without objection.
- (8) In the case of delayed delivery, the buyer does not have the right to change the method of delivery or to use other technical means to speed up the delivery. If they fail to comply with this obligation, then they are liable for any resulting additional costs. The buyer also does not have the right to demand such measures to speed up delivery from the seller unless they pay the seller the expected additional costs in advance.
- (9) Claims for damages due to delayed delivery are only admissible if the delay is the result of intentional or grossly negligent actions on our part, if they are for injury to life, body or health, or if the delay relates to a material contractual obligation. A delay is excluded if we have made a partial delivery, unless the scope of that delivery is completely insignificant.
- (10) The buyer has the obligation to respond in an appropriate time to a request on our part for information about whether, in the case of a possible delay, they would rescind the contract and/or require damages rather than the service, or insist on delivery.
- (11) We will pack the item to be delivered appropriately and economically at the cost of the buyer. The buyer has no further right to demand particularly cheap packaging, or packaging with a particular technical configuration unless they pay the resulting costs. Such packaging will only be provided if we have explicitly confirmed the requested type of packaging in our order confirmation. Shipping is conducted in an orderly

commercial fashion. The buyer may not issue detailed instructions unless they are recognised in our order confirmation and the buyer has agreed to pay any resulting additional costs.

- (12) We only maintain inventories of replacement parts where it is explicitly agreed in the order confirmation. We explicitly do not observe any existing standards on the part of the buyer in that regard.

## **7. Transfer of risk, delayed acceptance**

- (1) The risk of accidental loss or accidental degradation of the item to be delivered is transferred to the buyer on delivery, at the latest. If the buyer does not collect the goods although they have been informed that the goods are ready for collection, and if they cannot prove that they were prevented from collecting the goods by circumstances beyond their control, then risk is transferred to the buyer after three working days. In the case of purchases for delivery, risk and risk of delay are transferred to the buyer when they are informed that the goods are ready for dispatch and, at the latest, when the goods are handed over to the shipping company, carrier or other individuals tasked with carrying out shipping. If approval has been agreed, then it, at the latest, results in the transfer of risk if none of the other cases applies. Transfer and/or approval are not affected by a delay in acceptance on the part of the buyer.
- (2) Shipping is at the cost and risk of the buyer. We are not liable – even if we pay the cost of delivery – for damage or loss during transit, unless such damage resulted from a failure on our part to use the type of packaging or means of transportation agreed in writing in the order confirmation or other documentation, and such a failure represents a negligent failure to package or transport the goods in an appropriate manner.
- (3) If the buyer does not collect the item to be delivered from us, the goods are transferred when we or the carrier hand over the item to be delivered to a person who is prepared to accept it and sign a delivery note at the buyer's address, unless the accepting individual recognisably does not belong to the buyer's company and is recognisably not authorised to accept the goods. Otherwise, they are considered authorised to accept the goods and sign the delivery note.
- (4) If the buyer delays acceptance, fails to cooperate, or if our delivery is delayed for other reasons for which the buyer is responsible, then we have the right to demand damages including additional costs (e.g. storage costs). Such damages are billed at a flat rate of 5 % of the value of the delivery for each week begun, starting from the time when the buyer is informed that the goods are ready for dispatch. After setting and observing an appropriate deadline, we also have the right to dispose of the goods to be delivered in other ways and arrange a subsequent delivery within an appropriate period. We can make the subsequent delivery dependent on payment of any damages on our part that have resulted or will result from the delay by the buyer.
- (5) The preceding provisions also apply to partial deliveries.

## **8. Approval**

Approval only takes place if it has been explicitly agreed.

## 9. Provision

- (1) Order-related manufacturing equipment provided by the buyer must be sent to us at no cost. We will only check the compliance of the equipment with the contractual specifications or drawings or samples provided to us if such checks have been explicitly agreed. If we consider it necessary to the manufacturing of the item to be delivered in accordance with the contract, we may make changes to manufacturing equipment provided by the buyer.
- (2) The cost of changes to, maintenance of and replacement of the manufacturing equipment is borne by the buyer.
- (3) We will handle and store the manufacturing equipment with the care we use in our own affairs. We are not liable for accidental loss or degradation. The buyer may not issue orders regarding the handling of the manufacturing equipment. We may return manufacturing equipment that we no longer require at the cost and risk of the buyer or, if the customer does not respond to a request for collection within an appropriate period, store them at the usual cost and, after setting an appropriate deadline and issuing warnings, dispose of it.
- (4) Order-related manufacturing equipment produced or procured by us at the buyer's request remains our property, even if partial costs are billed. We will retain it for a period of two years from the date of the last delivery. We are not obliged to take out insurance. The buyer may not issue any instructions regarding storage. If there is a deviating agreement that the customer will take ownership of the equipment, ownership is only transferred after payment of the agreed full price or partial cost. The transfer of the equipment is replaced by our obligation to store it. If there is no important reason to the contrary, the storage arrangement can be terminated by the buyer two years after the transfer of ownership. We may return the equipment at any time, resulting in the termination of the storage arrangement.
- (5) If we own the equipment, then we have no obligations to the buyer. We are free to dispose of our property in accordance with the applicable regulations as long as we do not violate any binding contractual or legal conditions.
- (6) The buyer may only exercise rights under copyright law or commercial property rights to the extent that they have informed us of the existence of such rights and has explicitly reserved them.
- (7) If products made using manufacturing equipment that is only suitable for a single use are rejected, the buyer must either replace the manufacturing equipment or bear the cost of replacement.

## 10. Defects

- (1) We are liable for defects in the delivered item in accordance with the applicable regulations, unless they are contradicted by the following conditions. We are certified according to DIN ISO 9001-2015. Beyond that we do not accept any obligations to the buyer regarding certification.
- (2) The buyer is obliged to examine the delivered item for defects immediately after delivery. They must inform us of any defects identified immediately. The complaint must be made in writing. Drivers and other employees involved in the delivery are not authorised to accept complaints. If the buyer informs us of defects they identified during the immediate or appropriate examination at a later time, then we are not liable for such defects. The buyer may not refuse to accept a delivery due to insignificant defects or a defect that only affects part of the delivery. They may also not withhold or delay payment of the

purchase price for the defect-free part of the delivery. The buyer has no special right to examine the item to be delivered before delivery or collection. They have no right to examine production or other processes and are referred to the examination of the delivered item at handover in accordance with the applicable regulations.

- (3) If they are not explicitly described as binding, the details, images, drawings, and information regarding weight and dimensions in brochures and catalogues are approximations as commonly used in the industry. Deviations do not represent defects. Dimensions and weights listed in our communications and order confirmations do not represent quality guarantees.
- (4) We do not offer warranties regarding results that cannot be achieved with regard to a delivered item for technical reasons, even if the buyer informed us of their desire to achieve such results before the contract was concluded. The buyer may only claim that such results are feasible if they can prove their technical feasibility. If all other conditions have been met, the buyer is only freed from the obligation to remunerate our efforts to achieve the desired technical goal if we explicitly guaranteed the desired result in the order confirmation and if the buyer effectively rescinds the contract due to our failure to achieve the goal.
- (5) The buyer must give us the necessary time and opportunity to carry out all subsequent improvements and replacement deliveries we consider necessary; otherwise we are freed from liability for the resulting consequences. The buyer may only correct a defect themselves or contract a third party to correct such a defect and request that we refund the cost of the necessary measures in urgent cases where operational safety is endangered or for the prevention of disproportionate damage. In such cases we must be informed immediately after the defect is identified. The costs incurred by the buyer when correcting the defect will only be refunded to the extent that the work conducted by the buyer without our involvement was strictly necessary. If the buyer or third parties correct the defect in an improper manner, then we accept no liability for the resulting consequences. The same applies to changes to the delivered item carried out without our prior agreement. Warranties for parts of the delivered items affected by such erroneous measures are void. Inappropriate action to correct a defect by the buyer results in overall warranties becoming void unless the buyer makes a claim relating to a defect that can be shown to be independent of the inappropriate action to correct a defect by the buyer. Replaced parts become our property.
- (6) No warranties are provided in the case of:
  - improper use,
  - defective installation or commissioning by the buyer or third parties,
  - wear,
  - improper handling/operation, inappropriate operating materials,
  - use of substitute materials not supplied or explicitly approved by the supplier, supplied by customers or third parties,
  - defective construction work, inappropriate conditions relating to buildings or machines,
  - chemical, electrochemical or electrical influences, insofar as they are beyond the control of the supplier,
  - damage resulting from a lack of the required mountings and attachments at the buyer's locations,
  - changes to the delivered item carried out by the buyer, unless they are covered by the intended use of the item.



- (7) In the case of insignificant defects, the buyer only has a right to reduction. The right to rescind the contract is excluded.
- (8) If the buyer submits a complaint about a defect that does not exist or is not our responsibility, then they must refund the cost of the examination and any corrective measures to us insofar as they do not result from gross negligence or intentional actions on our part.
- (9) In the case of defects in components supplied by other manufacturers that we cannot correct for licensing or actual reasons, we may make warranty claims against the manufacturer and supplier on behalf of the buyer, or transfer the right to make such claims to the client. Warranty claims may only be made in such cases if the legal enforcement of the claims against the manufacturer and supplier described above was unsuccessful or clearly has no chance of success. The temporal limitation of the affected warranty claims is suspended during legal action against a third party supplier.
- (10) The following are also excluded:
- damages, particularly for damages to other objects, insofar as we do not have exceptional unlimited liability,
  - contractual penalties,
  - claims relating to loss of production,
  - exercise of the right of retention by the buyers – insofar as it is not already excluded by other contractual conditions – with regard to a part of the owed payment exceeding the economic proportion of the delivery accounted for by the defect.
- (11) Unlimited liability only applies in case of intentional actions or gross negligence, in case of injury to life, body or health, or in case of infringements of responsibilities that are the subject of the contract insofar as they are restricted to foreseeable damage typical of the contract concerned.
- (12) Damage beyond the delivered item is only subject to claims:
- in case of intentional actions,
  - in case of gross negligence on the part of our executive bodies and managing employees,
  - in case of culpable injury to life, body or health,
  - if we fraudulently concealed a defect,
  - if a written guarantee is agreed in the order confirmation,
  - insofar as the seller is liable for personal injury or damage to property resulting from private use under the Product Liability Act (Produkthaftungsgesetz).

In case of negligent infringement of significant contractual obligations, we are also liable in case of gross negligence on the part of non-managing employees and in case of slight negligence – in the latter case restricted to foreseeable damage typical of the contract concerned and limited to the total cost of the order.

- (13) We are not liable for compliance with the dimensions and specifications of the buyer unless they were explicitly recognised in the content of the contract. We are also not liable for the ability of the buyer to successfully market the delivered items. Nor are we liable for compliance with foreign laws.
- (14) If the item to be delivered is manufactured or configured according to the buyer's specifications, they are responsible for ensuring that it does not infringe any copyrights or commercial property rights through its design or specific form. The buyer releases us from all claims from third parties resulting from the infringement of copyrights or commercial property rights. In case of domestic infringements of copyrights

or commercial property rights by the delivered item for which we are at fault, we will be given the opportunity to modify the delivered item so that the legal violation is corrected. Only if the use in modified form and a reduction in the purchase price are unreasonable for the buyer, and we are not prepared or unable to make a further modification, may the buyer rescind the contract.

- (15) Claims for damages resulting from infringements of copyrights or commercial property rights on the part of the buyer are excluded unless we are guilty of intentional or grossly negligent actions. The buyer is responsible for ensuring that placement of the delivered item on the market does not violate any laws. Claims against the buyer from third parties therefore only justify claims against us if we are guilty of intent or if the infringements are our fault and it could not have been identified by the buyer during an appropriate examination with the support of an expert that the use of the delivered item represents an infringement of copyright. Except in case of intent, damages are limited to one-and-a-half times the purchase price.
- (16) Warranty claims
- relating to defects in the delivered items expire 12 months after the transfer of risk,
  - relating to defects in replacement parts expire after three months or at the latest when claims relating to defects in the delivered items expire.

We are not responsible for extensions to the statute of limitations resulting from the statute of limitations of the buyer towards their end customers.

- (17) Warranty claims for which no legal claim is made in the three months after rejection by us are excluded.

## **11. Recourse against the supplier**

- (1) If goods newly manufactured by us are sold to a consumer by the buyer, the claims of the buyer with regard to defects are subject to the applicable regulations complemented by the following provisions.
- (2) Except in legally regulated cases, the legal assumption that the defect already existed at the time when risk was transferred (Sections 478 para. 3 and 478 German Civil Code (BGB)) does not apply if there is a period of more than six months between the transfer of risk to the buyer and the transfer of risk to the buyer's customer.
- (3) The right of the buyer to subsequent performance applies with the following limitations: The buyer may demand the type of subsequent performance from us that they owe their customer – taking into account the legal and contractual rights of refusal on the part of the buyer – in each individual case; we have no right to choose. The buyer may transfer this right to subsequent performance to their customer, but only for the purposes of fulfilment and protection. Therefore, their own continued liability toward the customer is not affected. A transfer in lieu of fulfilment is ineffective. Our right to refuse such subsequent performance according to the applicable requirements is not affected.
- (4) If we have agreed equal compensation pursuant to Section 478 para. 4 German Civil Code (BGB) with the buyer, then the right to reimbursement of their costs vis-à-vis the customer (Section 478 para. 2 German Civil Code (BGB)) is excluded.

## **12. Common rules regarding damages and liability**

- (1) Claims beyond the claims listed in these conditions are excluded, regardless of their legal basis. The limitation of liability does not apply in case of mandatory claims relating to

intentional actions or gross negligence, for injury to life, body or health, or for infringements of responsibilities that are the subject of the contract insofar as the latter are restricted to typical foreseeable damage. Liability under the Product Liability Act (Produkthaftungsgesetz) is not affected.

- (2) The buyer also has no rights of rescission and termination beyond those described in these conditions.
- (3) Liability is excluded for force majeure or other events not foreseeable at the time when the contract was concluded (e.g. operational disruptions of all kinds, issues relating to the procurement of materials or energy, transport delays, strikes, lawful lockouts, a lack of staff, energy or raw materials, difficulties in procuring the necessary official authorisations, official measures or non-delivery, incorrect or late delivery by suppliers) including disruptions caused by issues at our subcontractors. We are not responsible for disruptions caused by such events.
- (4) Contractual penalty claims are excluded unless explicitly recognised in our written order confirmation. They are also excluded if we have made delivery, without objection, for an offer in which contractual penalties are stipulated, or if we have sent an order confirmation in which the contractual penalty is not explicitly mentioned.
- (5) We are not responsible if we cannot perform certain services in accordance with the contract because the conditions agreed with our subcontractors prevent us from doing so. To that extent, such conditions, in their respective current version, are authoritative.
- (6) The buyer is obliged to inform us if a defect in the item to be delivered could cause damage to an object to which our delivery relates and on which it has an effect such that the cost of such damage to the object could exceed double the price of the item to be delivered. In such cases, the buyer is obliged to insure the object against damage insofar as such damage could exceed double the price of the item to be delivered. In case of damage, the insured sum must be deducted from any claim for damages against us. That deduction must be made even if the buyer has failed to claim the insured sum or to take out insurance for the full extent of possible damages above the limit. Taking out insurance also has the effect of excluding or reducing any claims against us. The buyer must provide proof that they have taken out insurance and of the existence of insurance to us. The same obligations on the part of the buyer apply if the item to be delivered is intended for use in a way that could have an immediate impact on the bodies or health of people.
- (7) The calculation of damages based on claims for damages awarded or to be awarded to third parties under foreign law is excluded if such claims for damages would represent an infringement of public order under German law or if the damages exceed those that could have been imposed by a German court in a suit for damages by more than 100 %. If such excess damages are awarded, then the calculation of damages may not be used as the basis for a partial claim for those damages.

### **13. Impossibility**

- (1) If a delivery or service becomes impossible or unreasonable due to circumstances beyond our control, or if that impossibility or unreasonableness becomes known after the conclusion of the contract, we are released from our obligation to deliver. If a delivery is delayed for more than two months for reasons beyond our control, we have the right to rescind the contract.

- (2) Impossibility may also consist of the infeasibility of a specific technical result that the item to be delivered should achieve despite using the latest technology. The buyer may only claim that the required result is technically feasible if they can provide proof.
- (3) If the delivery time is extended as a result of circumstances beyond our control, or if we have been released from our obligation to deliver due to such circumstances, it is not grounds for a claim for damages on the part of the buyer.
- (4) If impossibility or inability arise during delayed acceptance, or if the buyer is solely or largely responsible for the circumstances leading to the impossibility, then they remain obliged to pay.

#### **14. Retention of title**

- (1) We retain ownership of the goods sold until all of our current and future claims resulting from the purchase contract and ongoing business relationship (secured claims) are paid in full. If the claim is paid by cheque or bill of exchange, then title is retained until redemption, regardless of the payment by cheque. A payment by bill of exchange or cheque is not complete until redemption.
- (2) The goods subject to retention of title may not be pledged to third parties or used as collateral until full payment has been received. The buyer must inform us immediately in writing if and insofar as third parties have access to goods that belong to us.
- (3) If the buyer is in breach of contract, particularly if they have not paid the purchase price due, we may rescind the contract in accordance with the applicable regulations and take back goods on the basis of our retention of title and the rescission. If the buyer does not pay the purchase price due, we may only exercise these rights if we have set the buyer an appropriate deadline for payment that they have failed to meet, or if such a deadline is unnecessary according to the applicable regulations. The buyer authorises us now – irrespective of any external restrictions – to enter their premises and collect the delivered item. Such collection only represents a rescission of the contract if we make an explicit statement to that effect.
- (4) The buyer has the right to continue to sell or process goods subject to retention of title in the course of their ordinary business activities. In such cases, the following additional conditions apply unless we withdraw the authorisation to collect as a result of an extended retention of title because at least one payment on the part of the buyer is in arrears:
  - Retention of title extends to goods resulting from the processing, mixing or combination of our goods at their full value, although we are considered the manufacturer. If processing, mixing or combination with goods supplied by third parties results in continued existence of their property rights, then we retain common ownership of the goods proportionate to the billed value of the processed, mixed or combined goods. The resulting goods are also subject to the same retention of title as the delivered goods.
  - The buyer hereby assigns all claims against third parties resulting from the resale of the goods or products, or claims in the amount of any proportional co-ownership pursuant to the previous paragraph, to us as collateral. We accept that assignment. The obligations of the buyer listed in paragraph 2 also apply with regard to the assigned claims.
  - The buyer retains the right to collect such claims, along with us. We commit not to collect such claims as long as the customer meets their payment obligations to us, is not in arrears, no application for the opening of insolvency proceedings has been made and there is no other deficiency in their performance. However, if such

circumstances arise, we may demand that the buyer informs us of the assigned claims and the associated debtors, and provide all the information required for collection along with all associated documentation and informs their debtors (third parties) of the assignment.

- If the realisable value of the collateral exceeds our claims by more than 20 %, we will release collateral of our choice at the request of the buyer.

#### **15. Jurisdiction, place of performance, applicable law**

- (1) The jurisdiction and place of performance are the headquarters of our company. We have the right to file suits against the buyer with other courts that have jurisdiction according to the regulations on jurisdiction.
- (2) German law applies to all contracts with the buyer. The application of US law is excluded. In particular, a contractual partner may not make a claim against us because they are obliged to serve claims under US law, nor calculate damages based on claims for damages that would represent an infringement of public order under German law for this reason.

#### **16. Written form**

These delivery conditions reflect the agreements reached with the buyer insofar as our order confirmation does not state anything to the contrary. No ancillary agreements have been reached. Deviations and additions to these conditions must be made in writing. That also applies to deviations from the requirement for the written form. The effectiveness of commitments made to us by the buyer is not affected.

#### **17. Severability clause**

If individual conditions in these delivery and payment conditions are wholly or partially ineffective or invalid, then the contractual parties commit to agree to a provision that largely fulfils the purpose and aims of the ineffective or invalid provision.

#### **18. Confidentiality**

- (1) Each contractual party will only use all documentation (including samples, models and data) received as a result of the business relationship for mutual purposes, will handle them with the same care they would their own documents and will maintain the confidentiality of knowledge regarding third parties if the other contractual party describes it as confidential or clearly has an interest in maintaining its confidentiality.
- (2) This obligation begins from the initial receipt of documentation or knowledge and ends 36 months after the end of the business relationship. Insofar as there is a legitimate interest in confidentiality beyond that period, it applies indefinitely.

#### **19. Statute of limitations**

All claims on the part of the ordering party – for whatever legal reason – expire 12 months after the transfer of risk. The statutory periods apply to claims for damages relating to intentional actions or gross negligence, to injury to life, body or health, and to infringements of responsibilities that are the subject of the contract. That also applies to defects in a building or delivered items that were used in a building according to their normal use with defects for which we are responsible.

**20. Customer protection**

All buyers grant us customer and/or supplier protection. They commit to maintain confidentiality with regard to prices and final negotiations regarding all products and objects sold, and not to provide offers to third parties without our permission. The buyer commits to pay damages in the case of culpable non-compliance with this condition. The buyer is required to prove that they were not guilty of culpable non-compliance.

**21. UN Convention on Contracts for the International Sale of Goods**

The application of the UN Convention on Contracts for the International Sale of Goods is excluded. In particular, such application based on a specific agreement resulting from a condition to that effect in the buyer's general terms and conditions is rejected.

**22. Data processing**

We have the right to store all data about the buyer received in connection with our business relationship. We may use such data for all purposes that have a reasonable connection to our business relationship. The applicable data protection laws are not affected.