



## **General Terms and Conditions of Business** (valid from 01.11.2018)

### **§ 1 Scope of application, exclusion of validity of deviating terms and conditions of business**

(1) All our company's offers, supplies and services are based on these terms of contract, delivery and payment. They also apply to future offers, supplies and services to the purchaser without any further explicit reference, provided the purchaser is a legal entity under public law, a special fund under public law or merchant and the contract forms part of his business operations.

(2) Our conditions in principle apply exclusively. The validity of any deviating or additional terms of business of the purchaser is expressly contested. They require our approval for their validity in each instance.

### **§ 2 Conclusion of the contract, scope of supply, prohibition of assignment**

(1) Our offers will be made free of charge, unless agreed otherwise, and are not binding. The supply contract will become effective, unless otherwise agreed, upon acceptance of the order by the purchaser or when we commence execution of the order.

(2) If we confirm acceptance of the order in writing, our order confirmation is definitive as regards scope and content of the contractual relations and supply. The details in our offers are the basis for the intended use, unless otherwise agreed. The agreement on a guarantee or the acceptance of a procurement risk will only be valid provided it is set out in writing (Section 126 BGB [German Civil Code]).

(3) The documentation on which the offer is based, such as drawings, illustrations, descriptions and details of weight and dimensions, only become part of the contract if they are explicitly stated in our offers. We reserve the right to make amendments, unless these amendments are of a fundamental nature and provided the contractual purpose of the supply is not restricted in an unreasonable way for the purchaser.

(4) The purchaser is not entitled to assign or transfer to third parties any claims against us or rights arising from the business relationship without our consent. The same applies to any rights and claims against us arising directly by operation of law.

### **§ 3 Term of delivery**

(1) The agreed term of delivery shall commence in principle on conclusion of the contract, not however before receipt of any documentation to be provided by the purchaser and any agreed advance payments. The term of delivery is considered to have been met if before it expires the subject of supply has left our works or the purchaser has been advised that it is ready for despatch, in circumstances where it cannot be delivered for reasons which are the responsibility of the purchaser.

(2) The term of delivery will be extended appropriately in the event of Force Majeure and any unforeseen extraordinary events, such as riots, strikes, lockout, fire, seizure, embargo, statutory or regulatory restrictions on energy consumption, incorrect delivery and / or failure by our suppliers to deliver on time, insofar as we are not responsible for these events, we were unable to avert them despite reasonable diligence under the circumstances of the individual case and they affect timely fulfilment of the contract. If the term of delivery is extended unreasonably as the result of such circumstances, the purchaser is entitled to withdraw from the contract after a reasonable period of grace to be set by him, or, if the purchaser is interested in a part delivery, to withdraw from the non-fulfilled part of the contract. If we have already fulfilled part of the deliveries owed by us, the purchaser may only withdraw from the entire contract if he has demonstrated that he has no interest in the part deliveries provided.

(3) If we should fall into arrears with delivery, the purchaser will be entitled to withdraw from the contract after setting a reasonable grace period and this period has expired to no avail, or, if the purchaser is interested in a part delivery, to withdraw from the non-fulfilled part of the contract. If we have already fulfilled part of the deliveries owed by us, the purchaser may only withdraw from the entire contract if he has demonstrated that he has no interest in the part deliveries provided. Any claims by of the purchaser over and above this, in particular claims for compensation in lieu of performance for non-fulfilment or default are excluded, in the absence of anything different being provided for in § 9 below.

(4) Deliveries before expiry of the term of delivery and part deliveries are permitted, provided opposing interests of the purchaser are not unreasonably affected as a result.

(5) Differences in quantity of  $\pm 10\%$  are permitted and do not constitute any material defect within the meaning of the German Civil Code (BGB).

### **§ 4 Prices, payment, offsetting and retention rights**

(1) The prices stated apply to delivery ex works Nehren and are net prices plus the respective applicable statutory Value Added Tax, even if these are not shown separately, plus the costs of packaging, freight, installation, postage, insurance charges, customs duties, any bank charges and payment transactions and any other ancillary costs.



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(2) Unless otherwise agreed, payment of the price plus the aforementioned other costs is due within 10 days from the date of invoice less 2 % discount or within 30 days from date of invoice with no reduction. If the purchaser falls into arrears with a due payment within the framework of the business relationship, the abovementioned payment terms no longer apply and the amount invoiced is payable immediately without discount.

(3) If nothing is agreed to the contrary, we shall be entitled to make reasonable adjustments, differing from the contractual arrangement, in the case of wage or salary increases and/or increase in raw material or fuel prices, unless other cost elements have reduced to the same extent. An adjustment may also be made in the event of reductions in wages or salaries or a reduction in the prices of raw material or process materials. Our profits may not increase as a result of the adjustment. This entitlement applies to non-tradesmen only for orders which are to be executed later than four months after concluding the contract and for supplies and services as part of long-term contracts.

(4) In the event of payment arrears, we shall be entitled to make any further deliveries dependent on the payment arrears being cleared in full.

(5) We shall also be entitled to refuse our delivery if, due to circumstances we become aware of after concluding the contract, we have reason to believe that the purchaser's payment will not be received in full and on time, unless the purchaser effects payment or provides adequate security. This applies in particular if after concluding the contract, our credit insurer refuses to insure the purchase price for the payment of the delivered goods due to the creditworthiness of the purchaser.

(6) If the purchaser is a merchant within the meaning of the German Commercial Code (HGB) and the Contract forms part of his business operation, we are entitled to charge default interest of 9 percentage points above the respective basic rate without any prior warning being required.

(7) Offsetting counterclaims of the purchaser which are not legally established and not ready for decision is excluded. If the purchaser is a merchant and the contract forms part of his business operation, his notification of defects affects neither liability to make payment nor the due date and he waives the exercising of the right to withhold performance and/or right of retention, unless we or our legal representatives or agents are guilty of gross breaches of contract or the purchaser's counterclaims on which the right to withhold performance or right of retention are based are undisputed, are established in law or are ready for decision.

(8) We only accept cheques and bills of exchange in settlement by prior arrangement. Interest and costs must be borne by the purchaser.

### **§ 5 Passing of risk, delivery, packaging**

(1) Our deliveries are ex works unless otherwise agreed.

(2) Risk, including the risk of seizure, even for carriage-paid delivery, passes in any event to the purchaser when the delivered goods are handed over to the person in charge of transport. This also applies if we effect transportation ourselves or arrange for transportation, even if we have accepted despatch or shipment at our own expense. If despatch is delayed for reasons for which the purchaser is personally responsible, the risk passes to the purchaser at the time of notification that the goods are ready for despatch.

(3) Unless agreed otherwise, we will determine the nature and method of packaging and despatch. Despatch is uninsured unless the taking out of insurance is agreed separately.

### **§ 6 Retention of title**

(1) We retain title to the delivered goods until all claims arising from this contract have been settled in full, including those from cheques and bills of exchange, and also any claims under the law on cheques and bills of exchange arising from payments made by cheque or bills of exchange in settlement. In the event of the so-called "cheque-bill procedure", we reserve title to the delivered goods until the danger of recourse from the bills provided by us no longer exists. If the purchaser is a merchant and the contracts on which the following claims are based form part of his business operation, we furthermore reserve title to the delivered goods until all the claims arising from the business relationship have been settled in full.

(2) If the orderer behaves in breach of the contract, in particular in the event of failure to pay the purchase price when due, we shall be entitled to withdraw from the contract in accordance with statutory provisions, and/or to demand surrender of the goods under our reservation of title. The surrender requirement will not also include a declaration of withdrawal; instead, we may merely require surrender of the goods and reserve our right of withdrawal, provided the orderer is a merchant as defined in the German Commercial Code (HGB).



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(3) Any processing or transformation of the delivered goods is undertaken by the purchaser for us and does not involve any obligations on our part. If the purchaser combines, mixes, blends or processes the delivered goods together with other goods, we shall be granted co-ownership of the products generated as a result. The proportion of co-ownership is determined on the basis of the ratio of the delivered goods invoice value to the value of the new product. The combining, mixing, blending or processing of the delivered goods is allowed in the normal course of business provided our security rights as above are preserved.

(4) The purchaser may sell the delivered goods and the articles produced from them in accordance with para. 2 (hereinafter referred to collectively as goods sold subject to retention of title) in the normal course of business provided he guarantees the extended retention of title (assignment of claim in accordance with paragraph 4 below) and the purchaser for his part agrees an extended retention of title with his customer, as is customary in the trade. Other dispositions, in particular pledging, hiring out, lending or transfer as security are not allowed.

(5) The purchaser hereby assigns to us the claims arising from or expected to arise from the disposal or other use of the goods sold subject to retention of title, and we accept the assignment. Inasmuch as the goods sold subject to retention of title were co-owned by us, the assignment only covers the proportion of the claim corresponding to the co-ownership share.

(6) The purchaser is only authorised to recover the assigned claims in the normal course of business and only with the facility of revocation. Revocation is only possible if the purchaser fails to properly fulfil his obligations, in particular his obligation to pay in accordance with this contract, is insolvent or overindebted or application has been made for insolvency proceedings to be opened in respect of his assets. In this case, at our request the purchaser must notify the debtor of the assignment; we are also entitled to disclose the extended retention of title to the client of the purchaser. The purchaser must supply us with the name or corporate name of the purchaser's customer and their address in the event of revocation of the direct debit.

(7) The authorisation of the purchaser to dispose of the goods sold subject to retention of title and for the processing, combining, mixing, blending, and furthermore to recover the assigned claims shall expire in the event of non-observance of the terms of payment, unauthorised dispositions, in the case of protest of a bill and cheque and also in the event of application for insolvency proceedings against the purchaser. In these instances we are entitled to take possession of the goods sold subject to retention of title after a reasonable period has expired to no avail. The purchaser is obliged to surrender them at our request.

(8) The purchaser must inform us immediately in writing of access to the goods sold subject to retention of title or to the assigned claims by third parties, imminent or accomplished, and hand over the documentation required for intervention. Intervention costs, which also include any legal costs, in an internal relationship between ourselves and the purchaser are payable by the latter.

(9) We are obliged to release the securities due to us in accordance with the above conditions at the purchaser's request at our discretion, provided the realisable value of the securities does not exceed the claims to be obtained by more than more than 20 %.

### § 7 Warranty quality and title defects

(1) We accept responsibility for quality and title defects of the delivered goods subject to the provisions below.

(2) We must be notified of any complaints concerning incomplete or incorrect deliveries or complaints about obvious defects immediately the goods are delivered, or the delivered goods will be considered to be approved, unless we or our legal representatives or agents are guilty of intention to deceive. If the purchaser is a merchant and the contract forms part of his business operations, §§ 377, 378 German Commercial Code (HGB) also apply. Concealed defects must be notified in writing immediately upon being discovered.

(3) Our warranty for quality and title defects is limited, depending on the matter, to supplementary performance and in terms of time, to two years from delivery of the goods, or to one year if the orderer is a merchant as defined in the German Commercial Code (HGB). If the purchaser is an entrepreneur and if the latter on concluding the contract in the exercise of his commercial or independent professional activity is a legal entity under public law or a special fund under public law, we shall have the right to choose between remedy of the defects free of charge or replacement delivery. We are entitled to refuse supplementary performance if it incurs only disproportionate expense for us. A reduction of the agreed price or rescission of the contract may then be demanded in place of supplementary performance. A rescission of the contract is excluded if the defects are only minor. Furthermore, insofar as we have provided defect-free part



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deliveries, rescission of the entire contract is only allowed if the purchaser has demonstrated continued interest in the completed part deliveries.

(4) If the repair or replacement delivery fails and if the purchaser cannot reasonably expect a further attempt at supplementary performance, the purchaser may demand a reduction in the price or rescission of the contract. A rescission of the contract is excluded if the defects are only minor. Furthermore, insofar as we have provided defect-free part deliveries, rescission of the entire contract is only allowed if the completed part deliveries are demonstrably no longer of interest to the purchaser.

(5) Wider claims by the purchaser, in particular due to injury to persons, damage to goods which are not the subject of the contract or for loss of revenue, consequential costs etc. are excluded unless provided for otherwise under § 9 below.

(6) We accept no liability for such damage and defects that are due to wear and tear, defective or careless handling by the orderer or third parties, unsuitable process materials, alternative materials, physical, chemical or electrical effects that do not conform to the envisaged average standard effects, and where such circumstances are not the result of fault on our part. Only minor deviations from the required quality, in particular normal commercial quantity and quality tolerances, do not constitute material defects.

(7) Individual faulty parts out of the delivery as a whole in principle are not grounds for return of the entire delivery unless, given the nature of the defects, there are grounds to believe that the defect of the individual parts extends to the entire delivery.

(8) The purchaser must send the faulty delivered goods to us at his own risk for repair or replacement delivery. Any replaced goods or parts of these become our property or remain our property.

(9) We accept no liability if non-original spare parts are used.

(10) In the event of material defects to third party products or bought-in parts, our liability shall initially be limited to the assignment of our claims against the manufacturer/upstream supplier, in which case we shall provide the orderer with all the information it requires for an out-of-court claim. If the claim is unsuccessful, our liability will be reinstated. The orderer will not be obliged to file suit against the manufacturer/upstream supplier.

(11) The work required under the contract shall be free of legal defects if a third party is unable to file any claims against the orderer in connection with it within the Federal Republic of Germany. We shall only be liable for the fact that no third party rights exist with respect to other countries provided we have confirmed this in writing.

(12) The third-party products that we offer are delivered with the usual documentation by the manufacturer in its own language. We assume no liability for the documentation.

### **§ 8 Withdrawal, inability to fulfil the contract**

(1) The purchaser may also - regardless of the other matters dealt with in these conditions - withdraw from the contract by giving a written statement if it has proved completely impossible for us to fulfil the contract before passing of risk. The right to withdraw in the event of partial inability is possible only if the part delivery or partial service is demonstrably not of interest to the purchaser - he may also demand a reasonable reduction in price. Wider claims by the purchaser are excluded, in the absence of anything different being provided for in § 9 below. Furthermore withdrawal from the contract is only permitted if there is substantial breach of duty.

(2) If the inability to complete the contract is not imputable to any of the contracting parties, we are entitled to a proportion of the compensation commensurate with the service provided.

(3) If it should become evident after conclusion of the contract (for example through an application for the institution of insolvency proceedings) that our purchase price claim is at risk due to the orderer's inability to perform, we shall be entitled to withdraw from the contract in accordance with the statutory provisions in relation to refusal to perform and, if necessary, after setting an additional period of time. In the case of contracts relating to the manufacture of non-fungible items (custom-made items), we may declare our withdrawal immediately; this will not affect the statutory rules relating to the dispensability of notice.

### **§ 9 Liability**

(1) The purchaser has in principle no other or wider contractual or statutory claims against us, our legal representatives and agents other than those in these General Terms and Conditions.

(2) Our liability and the liability our legal representatives and agents, in particular in the above cases § 3 para. (3), § 7 para. (5) and § 8 para. (1) are in any event, in particular based on fault on the occasion of contractual negotiations, breach of ancillary duties, delict, inability to complete performance and default, limited to intent and gross negligence (gross misconduct) and the negligent breach of essential contractual



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obligations (cardinal obligations). We, our legal representatives and agents assume full liability for intent and gross negligence; for the remainder, our liability and the liability of our legal representatives and agents is, depending on the sum, limited to compensation for damage typical and foreseeable in the contract. Material contractual obligations are those that characterise fulfilment of the contract and on which the orderer is entitled to rely. If we have covered damage risk typical to the contract by a third party liability insurance, our liability and the liability of our legal representatives or agents is limited, depending on the amount, to the payments of the third party liability insurance, provided the purchaser is a merchant and the contract forms part of his business operations. If the insurer is released from liability, we must make up the insured sum with our own substituted performance.

(3) The limited liability of para. 2 and para. 4 do not apply to liability for damage arising from injury to life, body or health which is attributable to a negligent breach of obligation by us or an intentional or negligent breach of obligation on the part of a legal representative or agent of ours.

(4) Compensation claims by of the purchaser on the grounds of negligent breach of obligation by ourselves, our legal representatives, agents and other third parties whose conduct in the particular instance is attributable to us, in particular compensation claims for defective delivery are excluded, provided it does not involve breach of essential contractual obligations.

(5) In instances where our liability arises as a consequence of defects in materials purchased from third-party suppliers, our liability is limited to transferring our claims against third-party suppliers to the purchaser.

(6) The liability limited in these circumstances do not apply to our obligation to pay compensation in accordance with the provisions of the law of 15.12.1989 governing liability for defective products in its respectively valid version. The same applies to the event that it was not possible from the outset for us to fulfil the contract.

### **§ 10 Place of performance, place of jurisdiction, applicable law, severability clause**

(1) Place of performance for all claims arising from the business relationship, in particular with respect to any claim for supplementary performance, is 72147 Nehren, provided the purchaser is a merchant as defined in commercial law or a legal entity under public law.

(2) Place of performance for all claims arising from the business relationship including those from bills and cheques is the court in whose district we have our head office, provided the purchaser is a merchant as defined in commercial law or a legal entity under public law.

(3) All contractual and commercial relations between ourselves and the purchaser shall be adjudicated exclusively in accordance with the law of the Federal Republic of Germany, apart from the regulations applicable pursuant to intergovernmental agreements, in particular of the Hague Uniform Law for the International Sale of Goods [ULIS] and the United Nations Convention on Contracts for the International Sale of Goods.

(4) If one or more provisions of these General Terms and Conditions of Business or parts of a provision should be invalid, such invalidity will not affect the validity of the remaining provisions of the contract as a whole. The parties undertake to mutually agree a valid rule to replace the invalid provision, which reflects the invalid provision in economic terms as closely as possible. The previous two sentences will apply accordingly in the event of a loophole in the contract.