

# General terms and conditions of sale and delivery TBH GmbH

January 2018

## 1. Scope

- 1.1 We provide all our deliveries and services exclusively under these general terms and conditions of sale and delivery ("GTC"). We shall not recognize any conflicting or differing conditions of the customer, unless we have expressly consented to their validity.
- 1.2 Our GTC also applies to future transactions, even if they should not be separately included in individual cases.

## 2. Offer and order

- 2.1 Our offers are without obligation and any commitment, unless they are expressly described as a binding offer.
- 2.2 Our written order confirmation is essential for its validation. In case of an immediate execution, the goods' invoice or the delivery note shall be considered as order confirmation. If the customer has objections to its contents, he must dispute this immediately. Otherwise, the contract shall be concluded in accordance with the order confirmation.

## 3. Prices

- 3.1 Our prices are net ex works and do not include packaging, freight, postage, value assurance, customs clearance and VAT.
- 3.2 Insofar as costs are not predictable after the contract has been concluded, we are entitled to adjust the prices in the context of the changed circumstances without calculation of an additional profit.

## 4. Payment

- 4.1 The payment shall be made within 10 days after the date of invoice to acquire a 2% discount or 30 days after the invoice date.
- 4.2 Bills of exchange and checks will only be accepted by explicit agreement for payment purposes. Discount charges and other costs are to be borne by the customer. Using bills of exchange as payment excludes a cash discount.

## 5. Delivery/Risk of ownership

- 5.1 In the event of damage to the customer due to a default caused by us, we shall be liable in accordance with the statutory provisions, if coarse negligence occurs to us. If we have not caused the delay by coarse negligence, we exclude any liability.
- 5.2 The shipping is carried out – even if we agree upon the freight charges – at the risk of the customer. If dispatch is delayed due to circumstances, which are acceptable to the customer, the risk shall pass to him from the date of the dispatch.
- 5.3 If we select the method of dispatch, the route or the consignor, we are only liable for coarse negligence in the respecting selection.

## 6. Reservation

- 6.1 We retain ownership of all goods delivered by us until full payment of all claims, which was arising from previous contracts, is made. The claims also include checks and bills of exchange as well as outstanding balances. If liability for us in connection with the payment is reasonable, the reservation of ownership does not expire until our claim is excluded from the bill of exchange.
- 6.2 There shall be no rescission in the withdrawal of the delivery item of the contract, unless we had expressly accepted this.
- 6.3 The customer has the authority to dispose of the delivery item in case of permissible revocation within the timeframe of a proper business transaction. In the event of resale, the customer assigns all claims arising to us, particularly payment claims, but also other claims related to the sale, in the amount of our invoice (including VAT), irrespective of whether the delivery item has been resold without or after processing. The customer is entitled to revoke the assigned claims trustworthy until receiving a permissible revocation for important reasons. We are entitled to announce the transfer of claims to third-party debtors on behalf of the customer. When the assignment to the third-party debtor is notified, the customer's rights of conscientious objection ceases. In the event of revocation of the collection right, we may demand that the customer notifies us of the assigned claims and their debtors, provides all the details required for collection, hands over the related documents and notifies the debtors of the assignment.
- 6.4 Processing of the delivery item by the customer always takes place by us. We are regarded as a manufacturer according to § 950 BGB (German law) without further obligation. If the delivery item is processed with other items not belonging to us, we shall acquire the co-ownership of the new item in relation to the delivery items' value to that of the other processed items at the time of manufacturing. In addition, the regulations governing the goods supplied shall apply to the goods resulting from processing.
- 6.5 If the object of delivery is inseparably mixed with other objects, which do not belong to us, we shall acquire co-ownership of the new item amounting the invoice price of the delivery item combined with the other items at the time of mixing. If this was carried out in such a way that the customer's item is to be regarded as the main one, then it is agreed that the customer shall transfer proportionately co-ownership to us. The customer shall keep the sole proprietorship or co-ownership for us. These provisions apply accordingly for mixtures.
- 6.6 We engage to release at our discretion the collateral, to which we are entitled, after the customer's request when the realizable value thereof exceeds the secured claims by more than 20%.

## 7. Notification of defects and warranty

- 7.1 The customer has to check every delivery in regard of completeness and damage of the packaging upon receipt. Complaints must be sent to us immediately by writing. A statement of facts is to be taken to the carrier.
- 7.2 The customer is obligated to investigate the goods immediately and to notify us directly of any obvious defects in writing, within one workday at the latest. Hidden defects must be reported in writing immediately after their discovery.
- 7.3 If a defect exists of which we are responsible, we shall be entitled to rectify the defect or to make a replacement.
- 7.4 Changes in the construction and / or design, which neither affect the functionality nor the value of the delivery item, are reserved and do not entitle to a complaint.
- 7.5 Unless specified by the customer, the materials are named based on our experience regarding production. However, our recommendation does not relieve the customer of the suitability for his application. The risk of use is borne by the customer.
- 7.6 There is no warranty obligation for improper handling, assembly errors, intervention by third parties and defects caused by operations, which cannot be influenced by us. Natural wear is not subject to warranty. Claims for damages under the warranty are only valid in accordance with section 9.

## 8. Consulting, design, planning

Consultancy, projecting and planning for the customer are only binding insofar as they relate to the use of our delivery items and are based on completed written information of the customer about the intended use and actual use as part of the system. If our actions are binding and an order is placed, we shall be liable for any errors only in case of coarse negligence. If the customer supplies drawings, plans, data or other information, he will be solely responsible for their correctness. Any errors resulting from this are at the solely expense of the customer.

## 9. Claims of damages

- 9.1 We are liable for intent and coarse negligence. We shall be liable for slight negligence only when we are responsible for the infringement of essential contractual obligations arising from the contract or the breach jeopardizes the achievement of the contractual purpose. Furthermore, in the case of slight negligence, claims for damages by the customer, irrespective of the legal basis, in particular those, which are based on breach of obligations at the time of conclusion of the contract, or contractual obligations as well as on warranty, are excluded.
- 9.2 The above limitation of liability does not apply to claims arising from the German Product Liability Act, in case of initial inability to perform or any justifiable impossibility, as well as missing features which are expressly assured and which are intended to protect the customer against incurred damage.

## 10. Offsetting and retention

The customer is only allowed to offset the claim when the counterclaim is undisputed or legally binding. The customer is only entitled to assert a right of retention when it is based on the same contractual relationship and its counterclaims are undisputed or legally established.

## 11. Ownership and copyrights

All offers, drawings, cost estimates and other documents remain our property and must be returned upon request. There is no right of retention. The documents are neither allowed to be made accessible to third parties, nor used in any further way by the customer. Ownership, copyright and other proprietary rights are unlimited to us. In the case of an infringement, the customer shall pay compensation.

## 12. Rights in the events of asset degradation

- 12.1 If we are informed that the customer is being prosecuted for the bill of change, if foreclosure measures are initiated against him or if another material asset deterioration occurs, we will be entitled to demand prepayments or security payments even on unsuccessful claims and to refuse delivery on our part. If the customer does not comply with our demand despite a reasonable period of grace and refusal, we are entitled, at our discretion, to rescind the contract or to claim damages.
  - 12.2 Furthermore, we are entitled to prohibit the customer to resell the goods and - subject to further rights of a property reservation - to reclaim goods, which to that point have not been paid by the customer.
- ## 13. Place of performance, jurisdiction, applicable law
- 13.1 The place of delivery and payment as well as of all obligations arising from the delivery contract is for both parties Straubenhardt, Germany.
  - 13.2 Jurisdiction for all disputes arising from the contractual business relationship as well as from its emergence and its effectiveness is Straubenhardt, Germany. By our judgement, we may also bring the action at the customer's place of business.
  - 13.3 The German law governs the contractual relationship.