

ADDENSEO[®] International GmbH

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GERMANY

General Conditions of Sale

§ 1 General, Scope

(1) These General Conditions of Sale (AVB) apply to all of our business relationships with our customers (hereinafter: "Buyer"). The General Terms and Conditions only apply if the buyer is an entrepreneur (§ 14 BGB), a legal entity under public law or a special fund under public law.

(2) The General Terms and Conditions apply in particular to contracts for the sale and / or delivery of movable items (herein after also: "goods"), regardless of whether we manufacture the goods ourselves or buy them from suppliers (§§ 433, 651 BG). The current version of the General Terms and Conditions also apply as a framework agreement for future contracts for the sale and / or delivery of movable objects with the same buyer, without us having to refer to them again in each individual case; In this case, we will inform the buyer immediately of any changes to our AVB.

(3) Our AVB apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the buyer only become part of the contract if and to the extent that we have expressly agreed to their validity. This consent requirement applies in any case, for example even if we carry out the delivery to the buyer without reservation with knowledge of the general terms and conditions of the buyer.

(4) Individual agreements made with the buyer on a case-by-case basis (including side agreements, additions and changes) always take precedence over these GTC. A written contract or our written confirmation is decisive for the content of such agreements.

(5) Legally relevant declarations and notifications that the buyer must submit to us after the conclusion of the contract (e.g. setting deadlines, notifications of defects, declarations of withdrawal or reduction in price) must be in writing to be effective.

(6) References to the validity of legal regulations are only used for clarification purposes. The statutory provisions therefore apply even without such a clarification, unless they are directly amended or expressly excluded in these AVB.

§ 2 Conclusion of the contract

(1) Our offers are subject to change and non-binding. This also applies if we have provided the buyer with catalogues, technical documentation (e.B. drawings, plans, calculations, references to DIN standards), other product descriptions or documents, also in electronic form, in which we reserve title and copyright.

(2) The order of the goods by the buyer is considered a binding contract offer. Unless otherwise stated in the order, we are entitled to accept this contract offer after it has been received by us.

(3) Acceptance can be declared either in writing (e.B. by order confirmation) or by delivery of the goods to the buyer.

§ 3 Delivery period and delay in delivery

(1) The delivery period is agreed individually or specified by us upon acceptance of the order. If this is not the case, the delivery period is approx. 1 week from the conclusion of the contract.

(2) If we are unable to meet binding delivery deadlines for reasons for which we are not responsible (unavailability of the service), we will inform the buyer of this immediately and at the same time inform the expected new delivery time. If the service is also not available within the new delivery period, we are entitled to withdraw from the contract in whole or in part; we will refund a consideration already provided by the buyer without delay. In particular, the non-availability of the service in this sense is deemed to be the non-timely self-supply by our supplier, if we have concluded a congruent cover transaction, neither we nor our supplier are at fault or we are not obliged to procure in individual cases.

(3) The occurrence of our delay in delivery is determined in accordance with the statutory provisions. In any case, however, a reminder by the buyer is required. If we are in default of delivery, the buyer can demand a flat-rate compensation for his damage caused by delay. The flat-rate damage shall be 0.5% of the net price (delivery value) for each completed calendar week of delay, but not more than 5% of the delivery value of the delayed delivered goods. We reserve the right to prove that the buyer has not suffered any damage at all or only a significantly lesser damage than the above lump sum.

(4) The rights of the buyer pursuant to Section 8 of these GTC and our statutory rights in particular in the event of exclusion of the obligation to perform (e.B. due to impossibility or unreasonable performance and/or subsequent performance) remain unaffected.

§ 4 Delivery, transfer of risk, acceptance, delay in acceptance

(1) Delivery takes place from stock, where the place of performance is. At the buyer's request and expense, the goods will be shipped to another destination (purchase of shipment). Unless otherwise agreed, we are entitled to determine the type of shipment (in particular transport companies, shipping route, packaging) ourselves.

(2) The risk of accidental loss and accidental deterioration of the goods shall pass to the buyer at the latest upon handover. However, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay is already transferred upon delivery of the goods to the forwarding agent, the carrier or the person or institution otherwise designated to carry out the shipment. Insofar as acceptance has been agreed, this is decisive for the transfer of risk. In addition, the statutory provisions of contract law shall also apply to an agreed acceptance in accordance with the statutory provisions of the contract law. The handover or acceptance is the same if the buyer is in default of acceptance.

(3) If the buyer is in default of acceptance, fails to cooperate or if our delivery is delayed for other reasons for which the buyer is responsible, we shall be entitled to demand compensation for the resulting damage, including additional expenses (e.B. storage costs). For this we charge a flat-rate compensation iHv. 35,- EUR per calendar day, starting with the delivery period or – in the absence of a delivery period – with the notification of readiness for dispatch of the goods.

The proof of higher damage and our legal claims (in particular compensation for additional expenses, reasonable compensation, termination) remain unaffected; however, the lump sum is to be set off against further monetary claims. The buyer is allowed to prove that we have suffered no or only a significantly lesser damage than the above flat rate.

§ 5 Prices and Terms of Payment

(1) Unless otherwise agreed in individual cases, our current prices at the time of conclusion of the contract shall apply, ex stock, plus statutory value added tax.

(2) In the case of the purchase of the shipment (Section 4 (1)), the buyer bears the transport costs from the warehouse and the costs of transport insurance, if any, requested by the buyer. Any duties, fees, taxes and other public charges shall be borne by the buyer. Transport and all other packaging in accordance with the Packaging Ordinance, we do not take back, they become the property of the buyer; pallets are excluded.

(3) The purchase price is due and must be paid within 14 days from invoicing and delivery or acceptance of the goods. Unless we claim the payment terms agreed in individual cases. However, in the case of contracts with a delivery value of more than EUR 10,000, we are entitled to demand down payment of iHv. 50% of the purchase price. The deposit is due immediately after invoicing.

(4) The buyer shall be in default on expiry of the above payment period. The purchase price is to be paid interest during the delay at the applicable statutory default interest rate. We reserve the right to claim further damage caused by delay. Our claim to the commercial maturity interest rate (Section 353 of the German Commercial Code) remains unaffected by merchants.

(5) The buyer shall only be entitled to set-off or retention rights to the extent that his claim is legally established or undisputed. In the event of defects in the delivery, the buyer's counter-rights remain unaffected, in particular in accordance with Section 7 (6) sentence 2 of these GTC.

(6) If, after conclusion of the contract, it becomes apparent that our right to the purchase price is jeopardised by the buyer's inability to pay (e.B. by requesting the opening of insolvency proceedings), we are entitled, in accordance with the statutory provisions, to refuse performance and, if necessary, after setting a deadline, to withdraw from the contract (Section 321 of the German Civil Code). In the case of contracts for the production of indefensible items (individual productions), we may immediately declare the withdrawal; the statutory provisions on the dispensability of setting the deadline remain unaffected.

§ 6 Retention of title

(1) Until full payment of all our current and future claims arising from the sales contract and an ongoing business relationship (secured claims), we reserve the ownership of the sold goods.

(2) The goods subject to retention of title may not be pledged to third parties or transferred for security before full payment of the secured claims. The buyer must notify us immediately in writing if and to the extent that third parties access the goods belonging to us.

(3) In the event of a breach of contract by the buyer, in particular in the event of non-payment of the purchase price due, we shall be entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand the goods on the basis of the retention of title. The request for surrender does not include the declaration of withdrawal at the same time; on the contrary, we are entitled to simply demand the goods and to reserve the right of withdrawal. If the buyer does not pay the purchase price due, we may only assert these rights if we have previously unsuccessfully set a reasonable period of time for payment to the buyer or if such a deadline is expendable in accordance with the statutory provisions.

(4) The buyer is authorized to resell and/or process the goods subject to retention of title in the proper course of business. In this case, the following provisions shall apply in addition.

(a) The retention of title extends to the products resulting from the processing, mixing or combination of our goods at their full value, wherein we are considered to be the manufacturer. If, in the case of processing, mixing or connection with goods of third parties, their right of ownership remains, we acquire co-ownership in proportion to the invoice values of the processed, mixed or connected goods. In addition, the same applies to the resulting product as to the goods delivered under reservation of title.

(b) The buyer assigns to us the claims against third parties arising from the resale of the goods or the product in total or in the amount of our possible co-ownership share in accordance with the preceding paragraph for security. We accept the assignment. The obligations of the buyer referred to in paragraph 2 shall also apply in view of the assigned claims.

(c) The buyer remains authorized to collect the claim alongside us. We undertake not to collect the claim as long as the buyer fulfils his payment obligations towards us, does not default on payment, no application has been filed for the opening of insolvency proceedings and there is no other defect in his capacity to pay. If this is the case, however, we can demand that the buyer informs us of the assigned claims and their debtors, provides all information necessary for collection, hands over the corresponding documents and informs the debtors (third parties) of the assignment.

(d) If the realizable value of the securities exceeds our claims by more than 10%, we will release securities at our discretion at the buyer's request.

§ 7 Claims for defects by the Buyer

(1) The statutory provisions apply to the rights of the buyer in the event of material and legal defects (including incorrect and under-delivery as well as improper assembly or defective assembly instructions), unless otherwise specified in the following. In all cases, the statutory special provisions remain unaffected in the final delivery of the goods to a consumer (supplier recourse pursuant to Sections 478, 479 of the German Civil Code).

(2) The basis of our liability for defects is above all the agreement made on the quality of the goods. All product descriptions that are the subject of the individual contract shall be deemed to be an agreement on the quality of the goods; it makes no difference whether the product description comes from the buyer, the manufacturer or us.

(3) Insofar as the quality has not been agreed, it is to be assessed in accordance with the statutory provisions whether there is a defect or not (Section 434 (1) S 2 and 3 Of Gb). However, we assume no liability for public statements by the manufacturer or other third parties (e.B. advertising statements).

(4) The buyer's claims for defects presuppose that he has complied with his statutory obligations to investigate and complain (Sections 377, 381 Of the German Commercial Code). If a defect appears during the examination or later, we must immediately be notified in writing. The notification shall be deemed to be immediate if it is made within two weeks, whereby the timely dispatch of the notification is sufficient to meet the deadline. Irrespective of this obligation to investigate and complain, the buyer must notify obvious defects (including incorrect and under-delivery) in writing within two weeks of delivery, whereby the timely dispatch of the notification is sufficient to meet the deadline. If the buyer fails to properly investigate and/or report defects, our liability for the defect not indicated is excluded.

(5) If the delivered item is defective, we can first choose whether we perform supplementary performance by remedying the defect (repair) or by delivering a defect-free item (replacement delivery). Our right to refuse subsequent performance under the statutory conditions remains unaffected.

(6) We are entitled to make the subsequent performance due conditional on the buyer paying the purchase price due. However, the buyer is entitled to retain a portion of the purchase price that is proportionate to the defect.

(7) The buyer must give us the time and opportunity required for the subsequent performance due, in particular to hand over the goods complained of for inspection purposes. In the case of replacement delivery, the buyer shall return the defective item to us in accordance with the statutory provisions. The subsequent performance does not include the removal of the defective item or the re-installation if we were not originally obliged to install it.

(8) We shall bear the expenses required for the purpose of inspection and subsequent performance, in particular transport, travel, labour and material costs (not: removal and installation costs), if a defect is actually present. However, if a request for rectification of the defect by the buyer turns out to be unjustified, we may demand compensation from the buyer for the costs incurred as a result.

(9) In urgent cases, e.B. in the event of a risk to operational safety or in order to prevent disproportionate damage, the buyer has the right to remedy the defect himself and to demand compensation from us for the expenses objectively required for this purpose. We shall be notified of such self-action without delay, if possible, in advance. The right of self-performance does not exist if we were entitled to refuse corresponding supplementary performance in accordance with the statutory provisions.

(10) If the subsequent performance has failed or a reasonable period of time to be set by the buyer for subsequent performance has expired without success or is expendable in accordance with the statutory provisions, the buyer may withdraw from the purchase contract or reduce the purchase price. However, in the event of a minor defect, there is no right of withdrawal.

(11) Claims of the buyer for damages or compensation for futile expenses exist only in accordance with section 8 and are excluded in the rest.

§ 8 Other Liability

(1) Unless otherwise stated in these GTC, including the following provisions, we shall be liable in the event of a breach of contractual and non-contractual obligations in accordance with the relevant statutory provisions.

(2) We shall be liable for damages for intent and gross negligence, regardless of the legal reason. In the event of simple negligence, we shall only be liable

(a) for damage resulting from injury to life, body or health.

b) for damages resulting from the breach of an essential contractual obligation (obligation, the fulfilment of which enables the proper execution of the contract in the first place and on whose compliance the contractual partner regularly trusts and may rely); in this case, however, our liability is limited to compensation for the foreseeable, typically occurring damage.

(3) The limitations of liability resulting from paragraph 2 do not apply if we have fraudulently concealed a defect or have assumed a guarantee for the quality of the goods. The same applies to claims of the buyer under the Product Liability Act.

(4) Due to a breach of duty, which does not consist in a defect, the buyer can only withdraw or terminate if we are responsible for the breach of duty. A free right of termination of the buyer (in particular pursuant to Sections 651, 649 of the German Civil Code) is excluded. In addition, the legal requirements and legal consequences apply.

§ 9 Limitation period

(1) By way of derogation from Section 438 (1) No. 3 of the German Civil Code (BGB), the general limitation period for claims arising from material and legal defects shall be one year from delivery. Insofar as acceptance has been agreed, the limitation period begins with acceptance.

(2) However, if the goods are a building or a thing which has been used for a building in accordance with its usual use and has caused its defectiveness (building material), the limitation period in accordance with the statutory provisions is 5 years from delivery (Section 438 (1) No. 2 BGB). Also unaffected are statutory special regulations for claims for the return of goods by third parties (Section 438 (1) No. 1 BGB), in the case of the seller's malice (Section 438 (3) of the German Civil Code) and for claims in the supplier's recourse in the event of final delivery to a consumer (Section 479 of the German Civil Code).

(3) The above limitation periods of the Sales Law also apply to contractual and non-contractual claims for damages of the buyer, which are based on a defect of the goods, unless the application of the regular statutory limitation period (Sections 195, 199 BGB) would lead to a shorter limitation period in individual cases. The limitation periods of the Product Liability Act remain unaffected in any case. Otherwise, the statutory limitation periods shall apply exclusively to claims for damages by the buyer in accordance with Section 8.

§ 10 Choice of law and place of jurisdiction

(1) The law of the Federal Republic of Germany shall apply to these GTC and all legal relations between us and the buyer to the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods. Conditions and effects of the retention of title in accordance with Section 6 are subject to the law at the respective storage location of the object, insofar as the choice of law made in favour of German law is inadmissible or ineffective thereafter.

(2) If the buyer is Kaufmann iSd Commercial Code, legal entity under public law or a special fund under public law, the exclusive – also international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is our registered office in Putzbrunn. However, we are also entitled to bring an action at the buyer's general place of jurisdiction.