

# » Delivery and payment terms

## 1. Validity of the terms

- (1) All our quotations, deliveries and services are implemented exclusively on the basis of these terms, even if not specifically mentioned during contractual negotiations. They apply to all contracts with contractors, legal representatives of public corporations and separate estates under public law (hereinafter known as the purchaser). They are also applicable for all future business relations, deliveries and services concerning the purchaser, even if in future they are not expressly mentioned or agreed again. Our terms are deemed to be applicable at the latest on acceptance of the goods or the service provided by us.
- (2) The purchaser's own business terms do not apply, even if we have not disputed these and still undertake the business. This is also true for those clauses in the purchaser's terms, which touch on matters, not contained in our terms, which are a charge on us in spite of the law.
- (3) If the purchaser is not in agreement with this method of working, he must at once make this fact clear in a special letter. In such a case we reserve the right to decline the contract, without it being possible to make any claims whatsoever against us.

## 2. Quotations and delivery terms

- (1) Our quotations are not binding, unless something different is specifically laid down. A binding contract as a result of an order placed by the purchaser acquires legal validity only on receipt of our written confirmation of the contract or through the acceptance by the purchaser of the object supplied or of the service we provided (whichever takes place first).
- (2) Oral agreements are binding on us only when we have confirmed them in writing.
- (3) Our delivery or service provided takes place ex works, unless agreed otherwise.
- (4) The deciding factor relating to the condition of the object or service provided by us is the information contained in our specification.
- (5) Unless expressly agreed otherwise, we provide no kind of guarantee, in particular neither a guarantee as to condition nor as to shelf life. Information relating to an object or service provided does not constitute consent to the acceptance of liability concerning procurement.

## 3. Threat to the solvency of the purchaser

If we are obliged to undertake work in advance, we can decline the work incumbent upon us if it becomes clear to us, only after concluding the contract, that our claim is endangered by the lack of solvency on the part of the purchaser and indeed until compensation is effectuated or security provided to this effect. We can set the purchaser an appropriate period of time, in which the latter, at his discretion, either has to effectuate the compensation contemporaneously with our service or provide security. Should this period expire without this being done we can withdraw from the contract.

## 4. Delivery time

- (1) A delivery period or period for accomplishing a service commences when the contract becomes fully effective, i.e. normally with the receipt of our contract confirmation, unless otherwise agreed in an individual case.
- (2) The delivery period or period for accomplishing a service is extended by the time, during which the purchaser for his part does not fulfil or not fulfil properly his required obligation to co-operate or his obligation to make a payment in advance.
- (3) If, before delivery of the object to be supplied, the purchaser requires another version of the same article, differing in any respect, the term of the delivery period will be interrupted until agreement is reached thereon and extended appropriately if, because of the alteration, it is no longer possible or reasonable for us to adhere to the previous delivery period or period for accomplishing a service.
- (4) If, following conclusion of the contract, we are prevented from fulfilling our delivery or providing a service because of the occurrence of unforeseeable, exceptional circumstances, which we could not avert in spite of carrying out the care necessary in accordance with the circumstances of the individual instance, the delivery period or period for accomplishing a service will be extended appropriately insofar as these circumstances lead to delays. This is particularly applicable if we can prove that, in spite of careful selection of our suppliers and in spite of concluding the necessary contracts concerning appropriate terms, we were not supplied on time by our suppliers. We can invoke this clause only if we have notified the purchaser immediately of the occurrence of these circumstances.
- (5) Should the delay referred to in Section 4 last longer than 1 month, both parties are entitled to withdraw from the part of the contract, which has not yet been fulfilled.
- (6) Claims against us for damages on account of delays in delivery or performance of services or for non-fulfilled deliveries or provision of services are excluded, unless there is gross negligence or malice aforethought on the part of ourselves, our legal representatives or agents. This exclusion of liability does not apply with respect to damage arising from injury to life, limb or health or which is based on an infringement of an important contractual obligation (so-called cardinal obligation) or if we, exceptionally, have provided a guarantee for punctual delivery or performance of a service. In the case, however, of an unintentional infringement of an important obligation (cardinal obligation) or of one which is not due to gross negligence, liability is limited to typical contractual and foreseeable damage, if no damage has arisen as a result of injury to life, limb or health and we have also not provided any guarantee for punctual delivery or performance of a service.
- (7) Section 6 applies with respect to claims for reimbursement of expenses in accordance with § 284 of the Civil Code.

## 5. Prices

- (1) All prices, unless expressly agreed otherwise, are net prices in Euro plus the legal Value Added Tax we have to pay at the time in question.
- (2) Unless otherwise agreed, deliveries of goods with a contractual value smaller than 50 € will be undertaken only for cash on delivery, plus a processing surcharge of 15 €.
- (3) For goods we agree to accept back we charge a re-stocking fee of 15%.

## 6. Payment terms

- (1) Invoices for repairs are payable immediately without discount.
- (2) Unless otherwise agreed, other payments by the purchaser for deliveries and services are to be made without any deduction within 30 days of the date of the invoice; payments made within 10 days of the date of the invoice are entitled to a discount of 2%. The deciding factor is the receipt of the relevant sum in our account. If the purchaser pays by instalments, the discount as a whole is applicable only if all instalments take place within the discount period.
- (3) Unless otherwise agreed, our field representatives are not entitled to collect payments.
- (4) The purchaser is entitled to offset payments with counter-claims only if the counter-claim, which is to be offset, is established as being undisputed or legally effective. The same applies to establishing a right of lien.
- (5) Unless expressly agreed otherwise, we reserve the right to decline bills of exchange or cheques. If the purchaser pays by means of a bill or a cheque, without there being an agreement to this effect, and we accept this, this is done only because it is payment of a debt, so that a payment takes place only when it is effectively cleared. All costs in connection with the discounting of bills or cheques are charged to the purchaser. We are not responsible for the punctual presentation of bills or cheques.
- (6) Should payment periods be exceeded, default interest will be charged at a rate of 8% p.a. plus basic interest of the European Central Bank.

## 7. Retention of title

- (1) The goods supplied remain our property until full payment has been made for all claims arising out of the business relationship with the purchaser existing at the time of the transfer of liability, including all secondary claims. This applies, however, only to claims, which arise on account of or as a result of the validity of these business terms.
- (2) For payments by cheque or bill of exchange retention of title ceases only with the redemption of these by the purchaser as drawee and the reimbursement of possible discounting and collection charges.

- (3) The purchaser is responsible for handling goods, which are still subject to our retention of title (reserved goods), carefully and for carrying out possible service-, maintenance- and repair work necessary to maintain their value. He is liable for the loss of and all damage to the reserved goods, even if he is not at fault.
- (4) He may neither pledge, hire out or loan the reserved goods nor dispose of them, except as authorised in accordance with Section 7.
- (5) If the purchaser does not fulfil his obligations concerning the proper treatment of the reserved goods, although we have provided him with an appropriate period to remedy the matter, we can also repossess them.
- (6) If we make use of our right to repossess the reserved goods, rescission of the contract occurs only if we have expressly stated this in writing. We are entitled to charge the purchaser an appropriate amount for our expenditure in connection with a repossession, for which he is responsible.
- (7) If the reserved goods are attached or claimed in any manner by a third party we are to be notified by the sending of copies of all documents (e.g. distraint document) in the possession of the purchaser. The purchaser is specifically obliged to draw attention to our property. All costs incurred by us in resisting an unjustified action against us are to be reimbursed by the purchaser, insofar as they are not to be borne by the third party and the purchaser is responsible for the action.
- (8) If the purchaser is a retailer he can dispose of the reserved goods as part of a normal business transaction; in this case claims arising from the disposal of the reserved goods will already have been assigned to us as security for the claims secured through the retention of title for the amount of the invoiced value of the reserved goods agreed with us, without requiring a further declaration. The purchaser is empowered to collect claims for us arising out of the resale of the reserved goods. We can annul the collection authority at any time, if the purchaser gets into arrears with his payment obligations towards us or becomes unable to pay or the opening of insolvency proceedings against his estate is demanded. As long as an annulment of the collection authority has not been taken by us, we ourselves will not collect the claim.
- (9) If the value of the securities, to which we are entitled by reason of this clause, exceeds the value of our secured claims together with subsidiary claims by more than 15%, we will release the excess securities. All other rights of the purchaser to request a release should the amount of the security become excessive remain unaffected.

## 8. Purchaser's rights with respect to defects

- (1) If we are responsible for delivering a newly manufactured article or providing a service and if the object being delivered or the service being provided exhibits a defect at the time at which the part passes, we are responsible, at our discretion, for repairing the defect or (as part of a sales' agreement) supplying a fault-free article or (as part of a work contract) providing a new service. The expenditure necessary for the purpose of the appropriate rectification work, in particular the costs of transportation, route, work and materials are to be borne by us.
- (2) If the rectification work, for which we are responsible in accordance with Section 1, fails, the purchaser can withdraw from the contract or reduce the compensation due to us through a statement. Insofar as nothing else occurs subsequently and we have not fraudulently concealed the defect or have provided a guarantee for the condition of the article or of the service, further claims on the part of the purchaser regarding a defect, on whatever legal grounds, are excluded.
- (3) Claims for compensation as a result of a defect remain in existence in the following cases, in spite of the exclusion of liability contained in Section 2:
  - for damage arising from injury to life, limb and health, which are caused by a culpable infringement of duty on the part of ourselves, our legal representatives or agents,
  - for other damage arising from a grossly negligent or malicious infringement of duty on the part of ourselves, of one of our legal representatives or agents,
  - in the case of liability on the basis of the product liability law.
- (4) Claims for compensation for simple negligence on our part are, incidentally, also not excluded, insofar as an infringement of an important contractual obligation (so-called cardinal obligation) has brought about the damage. In this case, however, for an instance of simple negligence only contractually typical, foreseeable damage can be required to be replaced by us, unless an incident described in Section 3 has occurred at the same time.
- (5) Claims on the part of the purchaser for defects on account of an insignificant decrease in the value or the serviceableness of the object supplied or in the service provided are not acceptable, subject to the provision in Section 7. We are not liable for penalties, which the purchaser has agreed with third parties.
- (6) If the object supplied is a second-hand one, all rights of the purchaser regarding the existence of a material defect are excluded, subject to the provision in Section 7.
- (7) The exclusions of liability in Section 5 and Section 6 do not apply if we have maliciously covered up the defect or have provided a guarantee as to the condition of the article or the service provided, as well as in the case of claims for compensation in the instances listed in Sections 3 and 4.
- (8) The aforementioned regulations concerning the exclusion or continuance in force of claims for compensation apply similarly to possible claims on the part of the purchaser for reimbursement of pointless expenditure in accordance with § 437 No. 3 of the Civil Code or § 634 No. 4 of the Civil Code together with § 284 of the Civil Code.
- (9) Claims on the part of the purchaser for restitution lapse after one year from the delivery of the object supplied in the case of a sales' contract or, in the case of a work contract, from the acceptance of the service provided. This does not apply
  - if an incident listed in § 438 Section 1 No. 2 of the Civil Code or in § 634 Section 1 No. 2 of the Civil Code occurs or
  - if the defect was maliciously concealed by us or if we have provided a guarantee as to the condition of the object supplied or of the service provided.
- (10) The rights of the purchaser to reduction and rescission, arising from § 437 No. 2 or § 634 No. 3 of the Civil Code, are excluded if the claim for restitution is invalid by lapse of time, taking into account particularly the regulations contained in Section 9, and we refer to this fact. He can, however, refuse payment of the purchase price or payment for the service provided insofar as he would be entitled to do so by reason of the rescission or right to reduction.
- (11) Peremptory rights on the part of the purchaser, such as the purchaser's rights as a contractor to recourse in accordance with § 478 of the Civil Code are not excluded or limited by these clauses.
- (12) If we prove that a complaint by the purchaser was unjustified, the purchaser has to reimburse us the costs incurred, including the costs of the investigation and return transportation.

## 9. Other exclusion of liability

In all other cases, i.e. not dealt with in Item 4, Section 6 and Item 9, we are liable for compensation only if it is a matter of a grossly negligent or premeditated infringement of duty on the part of ourselves, our legal representatives or agents. This exclusion of liability does not apply:

- for damage caused by injury to life, limb and health
- insofar as an infringement of an important contractual obligation (so-called cardinal obligation) has brought about the damage.
- in the case of liability on the basis of the product liability law.

## 10. Place of fulfilment and court of jurisdiction

- (1) The place of fulfilment and place of performance is Wangen-Göppingen (Germany), unless agreed otherwise.
- (2) The exclusive court of jurisdiction for all disputes arising directly or indirectly out of the contractual relationship, including action on a cheque or bill of exchange, is the competent court for our headquarters. Should we appear as plaintiff or petitioner, we are also entitled to appeal to the competent court for the purchaser's headquarters instead of to the former.

## 11. Applicable law

- (1) The contractual relationship is subject exclusively to German law.
- (2) Should one of the aforementioned clauses be or become invalid at law, the validity of the remaining clauses is not thereby affected.