

Sect. 1 General, Scope of application

(1) The present General Terms and Conditions of Sale (AVB) apply to all our business relations with our customers („Buyer“). The AVB shall apply only if the Buyer is an entrepreneur (German: *Kaufmann*, Sect. 14 BGB), a legal person under public law or a special fund under public law.

(2) The AVB shall apply particularly to contracts for the sale and/or the delivery of movable goods („Goods“), regardless of whether we produce the Goods ourselves or purchase them from suppliers (Sections 433, 651 BGB).

(3) Our AVB apply exclusively. Deviating, conflicting or supplemental general terms and conditions of the Buyer shall become a part of the contract only if and inasmuch as we expressly consent in advance to their application. This requirement of prior consent shall apply in all cases, for example even in the case that we perform delivery to the Buyer without reservation, despite our having knowledge of the Buyer's general terms and conditions.

(4) Any individual agreements concluded with the Buyer in any individual case (including side agreements, supplements, and/or amendments) shall take precedence over the present AVB, on principle. The contents of such agreements shall, unless proven otherwise, be stipulated by written contract, resp. our written confirmation.

(5) Legally significant declarations and notices that the Buyer is under an obligation to make to us after the conclusion of contract (e.g. setting of time limits, giving notice of defects, giving notice of withdrawal, or reduction of the purchase price) shall be effective only in written form.

(6) Notices made regarding the application of statutory provisions shall have a clarifying significance only. Even without such clarification, statutory law shall apply, unless it is directly modified or expressly excluded in the present AVB.

Sect. 2 Conclusion of contract

(1) Our offers are non-binding and subject to change. This shall apply even if we supplied catalogues, technical documentation (e.g. drawings, plans, calculations, references to DIN standards), other product descriptions, or documents – also in electronic form – to the Buyer to which we reserved our ownership and copyrights.

(2) Orders the Buyer places for Goods shall qualify as a binding offer to enter into a contract. If nothing else results from the order, we are entitled to accept such offer to conclude a contract within 2 weeks from our receipt of the offer.

(3) Acceptance can be declared either in written form (e.g. by confirmation of order) or by delivering the Goods to the Buyer.

Sect. 3 Delivery term and late delivery

(1) The delivery term is agreed individually or stated by us upon acceptance of the order. Should this not be the case, the delivery period is approx. 4 weeks from the conclusion of contract.

(2) If we are unable to meet the binding delivery term for reasons for which we are not responsible (non-availability of the Goods/service) we shall immediately inform the Buyer, at the same time stating the new prospective delivery term. If again the Goods/services are not available within the new delivery term, we may withdraw partly or fully from the contract; we will immediately refund any counter-performance already effected by the Buyer. A case of non-availability of Goods/service within the meaning hereof shall especially be deemed to exist in the event that our suppliers fail to deliver within the due time, in the event that we entered into a matching coverage transaction (German: *kongruentes Deckungsgeschäft*), if neither we nor our supplier are at fault, or if we are not under a procurement obligation in the individual case.

(3) Our default through late delivery is governed by statutory law. In any case, however, a reminder notice by the Buyer is required. In the event that we default through late delivery, the Buyer may demand liquidated damages for the damage the Buyer suffered through our late delivery. The flat rate for liquidated damages shall be 0.5% of the net price (delivery value) for each full calendar week, however not exceeding 5% of the delivery value of the Goods delivered late. We reserve the right to prove that the Buyer suffered no or significantly less damage than the lump sum set forth herein-above.

(4) The Buyer's rights arising under Sect. 8 of the present AVB, and our statutory rights, in particular in the case of an exclusion of the obligation to perform (e.g. on the grounds of impossible or unreasonable performance and/or subsequent performance), shall not be affected.

Sect. 4 Delivery, passing of the risk, acceptance, delay in taking delivery

(1) Delivery is EXW (ex works, Incoterms 2010) Keplerweg 15, 48493 Wetztingen, Germany, which is also the place of performance for delivery and any subsequent performance. At the Buyer's request and cost, the Goods will be delivered to a different destination (sales contract involving carriage of goods (German: *Versendungskauf*)). Unless otherwise agreed, we are entitled to determine at our sole discretion the type of carriage (in particular the transport company, the route of shipment, packaging).

(2) The risk of accidental loss and/or accidental deterioration of the Goods shall pass to the Buyer upon delivery of possession. In the case of a sale involving carriage of goods, however, the accidental loss and/or accidental deterioration of the Goods, and the risk of a delay, shall already pass over upon delivery of the Goods to the forwarding agent, the carrier, or any other person or institution commissioned with the shipment. If an acceptance procedure for the goods is mutually agreed, the risk

shall pass upon acceptance of the Goods. Otherwise, too, the statutory provisions of contracts for works (German: *Werkvertragsrecht*) shall apply *mutatis mutandis* if an acceptance procedure for the goods is mutually agreed. The Buyer's delay in taking delivery shall be deemed equal to delivery of possession, resp. acceptance of the goods.

(3) If the Buyer is in delay with taking delivery, omits a contributory act, or if delivery is delayed for other reasons for which the Buyer is responsible, we may demand compensation of the resulting damage/loss, including additional expenses (e.g. storage costs). In this case we will calculate a flat compensation rate in the amount of 0.5% of the net price (delivery value) for every full calendar week, however not exceeding 5% of the delivery value, starting with the delivery term, or – in the absence of a delivery term – with the notification that the Goods are ready for shipment.

Proof of greater damage and our statutory claims (in particular compensation of additional expenses, reasonable compensation, termination) shall not be affected; the flat rate shall however be set off against any additional pecuniary claims. The Buyer is permitted to prove that we suffered no loss/damage or considerably less damage/loss than the above flat rate.

Sect. 5 Prices and terms of payment

(1) Unless otherwise agreed in the individual case, our current prices as at the time of the conclusion of contract shall apply, namely EXW (ex works, Incoterms 2010) Keplerweg 15, 48493 Wetztingen, Germany, plus the statutory value-added tax.

(2) In the case of a sale involving carriage of goods (Sect. 4 para. (1) (German: *Versendungskauf*)), the Buyer shall bear the transportation costs ex works, and the costs of any transport insurance the Buyer may request. Any customs duties, charges, taxes, and other public dues, shall be borne by the Buyer.

(3) The purchase price is due payable within 10 days from invoicing and delivery, resp. acceptance, of the Goods. However, we are entitled, even within an on-going business relationship, to only perform delivery against full or partial advance payment. We will declare our corresponding reservations upon confirmation of the order, at the latest.

(4) Upon expiry of the payment term set out herein-above, the Buyer is in default. During default, the purchase price shall bear interest at the then current statutory default interest rate. We reserve the right to claim additional damage caused by default. Our claim to commercial interest on default (German: *kaufmännischer Fälligkeitsszins* (§ 353 HGB)) shall not be affected.

(5) The Buyer shall be entitled to rights of set-off or a retention right only if and inasmuch as the Buyer's claim is *res judicata* or undisputed. In the case of defects in delivery, the Buyer's counter-claims, especially those arising under Sect. 7 para. (6), sentence 2, of the present AVB, shall not be affected.

(6) If it becomes apparent after the conclusion of a contract (e.g. by filing an application for the initiation of insolvency proceedings) that our claim to the purchase price is put at risk by the Buyer's insufficient ability to pay we shall be entitled under statutory law to withhold performance and – where appropriate after setting a time limit – to withdraw from the contract (Sect. 321 BGB). In the case of contracts for the manufacture of non-fungible goods (individual custom made goods), we may declare our withdrawal forthwith; the statutory provisions relating to the dispensability of setting a time limit shall not be affected.

Sect. 6 Reservation of title

We reserve our ownership of the sold Goods until the receivables under the purchase contract have been fully paid.

Sect. 7 Buyer's claims based on defects

(1) The Buyer's rights based on defects in title and quality (including wrong and short delivery, and incorrect assembly or defective assembly instructions) shall be subject to statutory law, unless agreed otherwise herein-below. In all cases, the special statutory provisions relating to final delivery to a consumer (recourse against the supplier pursuant to Sections 478, 479 BGB) shall not be affected.

(2) Our liability for defects shall be based primarily on the agreed quality of the Goods.

(3) If no quality has been agreed, the existence or non-existence of a defect shall be determined on the basis of statutory law (Sect. 434 para. (1), sentences 2 and 3 BGB). However, we assume no liability whatsoever for any public statements of the manufacturer or any other third persons (e.g. advertising statements).

(4) Buyer's claims based on defects are subject to the precondition that the Buyer observed its/his statutory obligations to inspect the goods and give notice of defects (Sections 377, 381 HGB). If during inspection, or thereafter, a defect becomes apparent we shall be notified forthwith.

(5) If the delivered Goods are defective we may initially choose to either perform subsequently by remedying the defect (subsequent improvement) or to perform by delivering defect-free Goods (replacement delivery). Our right to refuse subsequent performance under the statutory conditions shall not be affected.

(6) We are entitled to subject the owed subsequent performance to the condition that the Buyer pay the due purchase price. However, the Buyer is entitled to retain an amount that is reasonably proportional to the defect.

(7) The Buyer shall grant us the time and opportunity required to perform the owed subsequent performance, in particular the Buyer shall hand over the rejected Goods for the purpose of inspecting them. In the case of replacement delivery, the Buyer shall return the defective Goods to us in accordance with statutory law. Subsequent performance includes neither the dismantling of the defective Goods nor renewed installation if originally we were not obliged to install them.

(8) We will bear the expenses required for the purposes of inspection and/or subsequent performance, in particular transportation, travel, labour, and material costs (not: dismantling and installation costs) if a defect actually exists. If no defect actually exists, we may claim reimbursement by the Buyer of the costs caused by the unjustified defect rectification claim (in particular inspection and transportation costs), unless the absent defectiveness was not perceivable to the Buyer.

(9) The following applies only in the case of used Goods: All and any claims based on defects are excluded in cases of selling and delivering used Goods. The exclusion of the liability for defects shall not apply within the scope of Sect. 7, para. (10).

(10) The Buyer is entitled to claim damages, or reimbursement of futile expenses, only under Sect. 8; otherwise these rights are excluded.

Sect. 8 Other liability

(1) Unless the present AVB, including the following provisions, provide otherwise, we shall be liable under statutory law in the event of a breach of contractual or extra-contractual obligations.

(2) We shall be liable for damages – whatever the legal cause – within the limits of liability for fault in cases of wilful intent and gross negligence. In the case of ordinary negligence, we, under reservation of a less strict standard of liability, shall be liable under statutory law (e.g. based on the standard of due care in own affairs) only

a) for damage/loss from an injury to life, the body, or health, b) for damage/loss through the significant breach of an essential contractual obligation (obligation the performance of which is *conditio sine qua non* for the implementation of the contract as such and upon the fulfilment of which the other contracting party regularly relies and may rely); in this case, our liability is however limited to compensation of the foreseeable, typically occurring damage/loss.

(3) The limitations of liability resulting from para. (2) shall apply also in the case of a breach of an obligation by, or for the benefit of, persons whose fault we are responsible for under statutory law. They shall not apply if we concealed a defect in bad faith or warranted a certain quality of the Goods, and/or claims of the Buyer under the Product Liability Act.

(4) The Buyer may only withdraw from the contract or terminate it on the grounds of a breach of an obligation that is not a defect if we are responsible for the breach. The Buyer's free right of termination (in particular under Sections 651, 649 BGB) is excluded. For the rest, the statutory requirements and legal consequences shall apply.

Sect. 9 Limitation

(1) Contrary to Sect. 438, para. (1), no. (3) BGB, the general limitation period for claims based on defects in title and quality shall be one year from delivery. If an acceptance procedure for the Goods has been agreed, the limitation period shall commence upon acceptance of the Goods.

(2) If, however, the Goods are a building or an object that has been used for a building in accordance with its normal purpose of use, and they caused the deficiency (construction material), the limitation period shall be 5 years from delivery, in accordance with statutory law (Sect. 438 para. (1), no. 2 BGB). Other special statutory provisions relating to limitation (in particular Sect. 438 para. (1), no. 1, para (3), Sections 444, 479 BGB) shall not be affected.

(3) The above limitation period under sales law shall apply likewise to contractual and extra-contractual damages claims of the Buyer that 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 the individual case. Buyer's damages claims under Sect. 8 para. (2), sentences 1 and 2(a), and under the German Product Liability Act, shall however be subject to the statutory limitation periods.

Sect. 10 Choice of law and place of jurisdiction

(1) The present AVB, and the contractual relationship between us and the Buyer, shall be governed by the laws of the Federal Republic of Germany, to the exclusion of uniform international law, in particular the UN Convention on Contracts for the International Sale of Goods.

(2) If the Buyer is an entrepreneur within the meaning of the German Commercial Code, a legal person under public law, or a special fund under public law, the exclusive – and international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be at our place of business in Wetztingen, Germany. The same shall apply accordingly if the Buyer is an entrepreneur within the meaning of Sect. 14 BGB. However, we are entitled in all cases to bring court action at the place of performance of the delivery obligation as specified in the present AVB, or in any prevailing individual agreement, or at the Buyer's general place of jurisdiction. Prevailing statutory provisions, in particular regarding exclusive jurisdiction, shall not be affected.

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