

## Terms of Sale (as of November 2023)

### 1 Application

Our Terms of Sale ("Terms") apply exclusively. We are not bound by the customer's terms even if we do not expressly object to them again upon receipt. They do not become part of the contract even if the order is accepted or filled without reservation.

### 2 Contract

Our offers are non-binding unless expressly stated otherwise. We can accept the customer's purchase orders within 15 business days. There is no contract until we confirm the order or start providing the service, whichever comes first, even if the order is placed orally. We are not bound by any agreements, including, without limitation, oral side agreements and representations made by our sales staff, until we confirm them in writing. Once the order has been confirmed, it is no longer possible to cancel it.

Obvious mistakes or printing, spelling, arithmetical or costing errors are not binding and do not give grounds for claims. We extend no contractual guarantees ("*Garantie*") except those we explicitly identify as such in writing.

The scope and subject matter of the service is exclusively governed by the order confirmation or, if the order is filled immediately, the delivery note. If the order confirmation or delivery note contains changes to the customer's purchase order, the customer is deemed to have consented to them if the customer unconditionally accepts the service and does not object in writing immediately. If the customer changes or adds to an already confirmed order, we are entitled to adjust prices and extend service deadlines.

Information, samples, specimens or illustrations in catalogs, price lists or other advertising materials are approximations only (e.g., weights, dimensions, values in use, allowable loads, tolerances or technical data) unless exact conformity is necessary for the service to be used for the contracted purpose. Any reference to technical standards is only a description of our service, not a guarantee of certain characteristics. We are not liable for public statements made by other third parties (e.g., advertising claims).

In the absence of any agreement to the contrary, we are not liable to provide instructions or advice. If we provide advice or technical information outside of the agreed-upon scope of service, the advice or information will be provided without any liability whatsoever.

Any documentation (such as manuals) that we may maintain for certain services or products is usually available to the customer on data storage media or as a free download on our website.

### 3 Prices, Payment

Our list prices apply as they may change from time to time. In the absence of any agreement to the contrary, the prices are ex works and do not include value-added tax or additional services such as packaging, loading, freight charges, unloading, transport insurance, assembly, customs, installation, implementation, introduction, training, maintenance, travel costs or other expenditures. For deliveries made to countries outside the EU, we may bill the customer for the costs of arranging transportation, issuing necessary documentation, clearing customs in Germany etc. as set out in our separate price list for handling charges.

In the absence of any agreement to the contrary, invoices are due and payable immediately without discounts. If we incur additional costs because we have been given incomplete information, unclear objectives or unclear tasks which the customer fails to complete or correct despite being requested to do so, these additional costs will be charged separately based on the current list price as it may change from time to time.

To be timely, a payment must be credited to our account by the deadline. Cash discounts are only allowed with our express written permission. The agreed cash discount will be deducted from the pre-tax invoice amount after deducting rebates, freight costs and other expenses.

For international deliveries and in the event of a default in payment or reasonable doubt as to the customer's ability to perform, we can demand advance payment and/or exercise a right of retention with respect to further performance. In addition, we may - after setting a deadline where applicable - rescind the contract (German Civil Code [BGB] § 321). This also applies if our trade credit insurer refuses to insure the customer's receivable.

A default in payment automatically voids any rebates, cash discounts and other concessions, and default interest will become due pursuant to German Civil Code [BGB] § 288. This is without prejudice to the ability to charge merchants interest starting on the due date (German Commercial Code [HGB] § 353).

The customer has no right of retention or set-off except where based on the same contractual relationship.

If the agreed service deadline is more than four months after the contract is formed, we reserve the right to reasonably adjust our prices with one month's prior notice if costs increase or decrease after the contract formation for reasons including, but not limited to, the conclusion of collective bargaining agreements, changes in production costs, or changes in market prices for comparable products. We will provide evidence of the factors that led to the increase at the customer's request. The customer can rescind the contract if the price rises more than 25 %.

If a customer located outside the Federal Republic of Germany (foreign territory buyer) or its authorized agent collects services from us and transports or ships them to the foreign territory, the customer must provide us with the proof required for tax purposes (evidence of export). If this proof is not provided, the customer will have to pay value-added tax at the rate applicable within the Federal Republic of Germany on the invoice amount for the delivery.

#### **4 Delivery, Passage of Risk**

We are allowed to provide the service early, in parts or in amounts that exceed or fall short of the contracted amounts as long as this is not unreasonable.

We will ship at the customer's risk and expense without guaranteeing that the cheapest method will be used. Unless the customer's place of business is stipulated as the place of performance for the delivery, the delivery deadline is deemed to be met as long as the carrier picks up the shipment for shipping by the deadline. We assume no liability for any delays attributable to the carrier. We will insure the service and/or shipping at the customer's prior instructions and expense.

If the service has to be accepted, risk will pass upon acceptance. The acceptance must be performed without undue delay after issuance of the ready-to-accept notice. The customer may not refuse acceptance due to an insignificant defect. Any obligation to accept deliveries is not affected by opposing regulations or the absence of permits and approvals.

The risk of accidental loss and deterioration passes to the customer no later than upon acceptance or handover to the carrier unless our contractual obligation, by way of exception, includes assembly and installation at the place of performance. If the acceptance or shipment is delayed due to circumstances beyond our control, risk will pass to the customer upon issuance of the ready-to-accept or ready-to-ship notice.

Service deadlines or other deadlines promised in written or oral form are only approximate unless we agree in writing to a fixed service deadline. Service deadlines begin upon receipt of the order confirmation, but not before all technical and commercial questions have been resolved or a required advance payment has been credited.

Force majeure events, government actions, and other circumstances for which we are not at fault – for example, strikes, operational upsets, inability to procure permits, difficulties in procuring materials, civil unrest, embargoes, travel warnings issued by the German Federal Foreign Office – that render our performance or that of our suppliers impracticable or impossible other than temporarily, exempt us from our obligation to perform for the duration of their effects. We are not liable for impossibility or delays due to such events. The customer may ask us to declare within 2 weeks whether we wish to rescind the contract or perform within a fair and reasonable period. We may rescind part or all of the contract if we cannot be reasonably expected to perform for the above reasons; this does not entitle the customer to damages. In this case, the customer is exempted from its obligation to render counter-performance. The customer may rescind the contract after fixing an additional reasonable period of time for us to perform our obligations if it can no longer be reasonably expected to accept the service for the above reasons. We will provide notification of delays regardless of their cause.

If the customer defaults on taking delivery, fails to comply with one of its duties to cooperate or our delivery is delayed for other reasons attributable to the customer, we may demand compensation for the resulting damage including additional expenses (e.g., storage costs). If we store the service in-house, we will charge a flat fee of EUR 20 for each partial or full square meter and for each partial or full week beginning on the delivery deadline or – in the absence of a delivery deadline – beginning on the date when the ready-to-ship notice for the goods has been issued.

The right to claim and prove that storage costs are higher, lower or non-existent remains reserved; the flat fee will be applied to further monetary claims.

The shipment associated with our service must be unloaded immediately upon arriving at the customer's premises. If unloading is delayed by more than 2 hours, the customer will bear the costs for the time that the transport vehicle is parked (standing time). The customer will bear the costs for standing time of more than 48 hours if the shipment is exported and cleared through customs, or 24 hours if it is not cleared through customs.

## 5 Ownership

We reserve all rights – including, without limitation, copyrights, ownership rights and other intellectual property rights – in and to all samples, specifications, models, plans, data, drawings, cost estimates, tangible and intangible information, and similar items provided to the customer in electronic or any other form. In the absence of any agreement to the contrary, any reproduction or release to third parties is prohibited.

We retain title to the service sold until the settlement of all accounts receivable (including any and all outstanding balances on running accounts) that the customer owes us now or in the future on any legal grounds whatsoever.

The customer must keep the service that is subject to retention of title in good working order. The customer must insure the service at its own expense, with us listed as the beneficiary, against theft, breakage, fire, water and other perils to the extent that the customer can be reasonably expected to do so. Proof of insurance must be presented on request. The service must not be pledged or assigned as security. The customer must notify us with all reasonable dispatch if it files for bankruptcy or if third parties attempt to attach (by seizure, etc.) the service that we own. The customer will reimburse us for the costs of our intervention if we cannot recover the costs from third parties.

If the customer breaches the contract by, inter alia, failing to pay the purchase price when due, we are entitled by law to rescind the contract and/or require the customer to immediately restore the service to us on the basis of the retention of title or, if applicable, assign its rights of restoration against third parties. The demand for restoration does not constitute a notice of rescission; instead, we may solely demand the restoration of the service to us and reserve the right to rescind the contract. If the customer does not pay the purchase price when it is due, we may only assert these rights if we have previously set a reasonable deadline for the customer to make the payment and the customer has failed to do so or if the law states that no such deadline is needed. The customer has no right of retention in this

case. This is without prejudice to claims for damages, including claims for compensation of lost profits. We can satisfy the debt owed by selling the repossessed service by private contract.

Until the time of revocation as set out in c) below and as long as the customer is not in default, the customer is authorized to resell and/or process the service that is subject to retention of title in the ordinary course of business. The following provisions additionally apply in this case.

- a. The retention of title extends to the full value of the products resulting from the processing, intermixing or combining of our service, with us considered to be the manufacturer without incurring any obligation thereby. If our service is processed, intermixed or combined with services provided by third parties and these third parties retain title, the contracting parties hereby agree in advance that our resulting (co-)ownership of the unitary item will transfer to us in proportion to the pre-tax invoiced value. In all other regards, the resulting product will be treated the same as the service provided under the retention of title clause.
- b. The customer hereby assigns to us in advance, as security, claims arising against third parties from the resale of the service, in lieu of the service, or otherwise in respect of the service (e.g., insurance, tort), including all ancillary rights, either in their totality or in the amount of our co-ownership share as per the above paragraph where applicable. We accept the assignment. The customer's duties as per the above paragraph shall apply in consideration of the assigned claims.
- c. The customer retains the right to collect the claim in addition to us. We agree not to collect the claim as long as the customer meets its payment obligations towards us, its ability to perform is not impaired and we have not invoked our retention of title by exercising a right pursuant to section 3. If one or more of these criteria are met, we may require the customer to disclose the assigned claims and their debtors to us, provide us with all the information required for collection, hand over the related documents and notify the debtors (third parties) of the assignment. Furthermore, we may in this case revoke the customer's authorization to resell and process the service that is subject to retention of title.
- d. Should the realizable value of the security furnished by the customer exceed our claims by more than 10%, we will release security at our option at the customer's request.

We reserve the right to revoke any usage rights we may have given to the customer if the customer is more than one month in default of payment.

## 6 Defects

If the customer is a merchant, it must carefully inspect the received service as soon as reasonably possible after receipt. We must be notified of any defects in writing without unreasonable delay ("notice of defects"). Damages sustained in transit or during shipping must be documented vis-à-vis the carrier. German Commercial Code [HGB] § 377 applies in all other regards. If no notice is given, the service is deemed to be free from defects and compliant with the purchase order unless the defect was not detectable during the inspection. Notice of such defects must be given immediately after discovering them.

Any resale, installation or other use of an allegedly defective service is deemed approval of performance as contracted, and to that extent precludes the possibility of claims for defects.

If we engage in negotiations regarding notices of defects, this does not mean that we waive the defense that the notices were late, unsubstantiated or otherwise insufficient. Damage reduction measures do not constitute an acknowledgment of defects.

Differences in quality or scope attributable to variations in the materials or changes made to the service to keep up with technical progress with regard to construction, design, dimensions, weight or color are permitted within the customary industry tolerances, provided (a) this does not restrict the usability of the service for the contracted

purpose, (b) no contractual guarantee exists, and (c) the customer can be reasonably expected to accept the change(s) and/or difference(s) in light of an objective assessment of all circumstances.

Claims for defects are excluded for a used service unless the defect was concealed with an intent to deceive or is covered by a contractual guarantee as to certain characteristics. This is without prejudice to our liability for bodily injury.

The service may only be used in the country for which it has been ordered. We assume no liability for infringements of intellectual property rights outside our country of domicile except by separate written agreement.

Exports of our service may be subject to the rules and regulations of the German Federal Office for Economic Affairs and Export Control (BAFA) and may require an export license, especially when exporting to non-EU countries. In this case, contract formation is subject to the condition precedent that BAFA issue the export license. In this case, the delivery deadline will not begin to run until the BAFA has issued the export license. The contract will not be formed if the export license is not issued; the customer cannot claim damages as a result.

In the absence of any agreement to the contrary, we extend no warranty of compliance with special import or export regulations (e.g., dual use) and/or the possession of required licenses for the place of use if the customer supplies the service to a non-EU country. Denial of a license does not authorize the customer to rescind the contract or claim damages.

If the service is defective, we will discharge our obligation to remedy the defect by, at our option, repairing the defective service or replacing it with a non-defective service. We can refuse a type of remedy or the entire remedy if it is impracticable for us. The customer must give us the requisite time, opportunity and access to remedy the defect; failing that, we will be exempted from any and all liability for the resultant consequences.

If we decide to provide a replacement, we may stipulate that it can only be provided concurrently with the return of the defective service. Replaced parts become our property.

We may make the owed remedy contingent on the customer paying the purchase price when due. However, the customer may retain a reasonable portion of the purchase price given the defect.

We will pay reasonably necessary and appropriate costs of remedying the defect wherever the costs have not been increased by having the service relocated to a place other than the place of performance. The customer bears any removal, installation or other costs. We have the right to raise the defense of contributory fault or contributory causation.

The customer may remedy the defect itself, or have it remedied by third parties, and demand reimbursement of necessary expenses from us, but solely in emergencies that jeopardize operating safety or where required to avert unreasonably severe damage or loss, in which case we must be notified immediately.

If the customer or a third party performs a repair without first giving us an opportunity to remedy the defect, we will assume no liability whatsoever for the resultant consequences. The same applies to any modifications made to the service without our prior consent, the replacement of parts or the use of consumable materials that do not conform to the original specifications unless the defect is not caused thereby.

We extend no warranties for inappropriate or improper use and/or repairs, improper assembly or placement into service by the customer or third parties, failure to follow user instructions, natural wear and tear, improper or negligent handling or storage, improper preventive maintenance or care, inappropriate supplies or chemical, electrochemical, electrical or environmental influences, unless we are at fault for such cases.

The customer is liable for any unjustified notices of defects if the defect's cause lies within the customer's area of responsibility and the customer acted at least negligently in failing to recognize this fact. We will charge our current list prices for any expenses not attributable to us under our liability for defects.

We will not accept any defect-related claims brought by the customer that go beyond or are not governed by these Terms.

## 7 Liability

Unless otherwise specified in these Terms, including the provisions set out below, we have the liability set out by law for breaches of our contractual and non-contractual duties.

We are liable for damages for willful misconduct and gross negligence on any legal grounds whatsoever wherever fault-based liability applies. Absent any laws stipulating a milder liability standard (e.g., exercising the same standard of care as in one's own affairs), our liability for slight negligence is limited to

- a. damages resulting from injury to life, limb or health,
- b. damages resulting from the significant breach of a material contractual duty (an obligation whose satisfaction is essential to the proper performance of the contract and upon whose satisfaction the contracting party may and does consistently rely); in this case, however, our liability is limited to the payment of foreseeable, typical damages.

The liability limitations set out in section 2 also apply to breaches of duty by or for the benefit of any involved suppliers, licensors, directors, officers, employees and other individuals for whom we are vicariously liable by law. The liability limitations do not apply wherever we have concealed a defect with the intent to deceive or have extended a contractual guarantee regarding certain characteristics of the goods or for customer claims under the German Product Liability Act [ProdHaftG].

The customer can only rescind or terminate the contract for a breach of obligations that does not constitute a defect if we are responsible for the breach. The customer does not have the right to terminate the contract at any time for convenience (including, without limitation, pursuant to German Civil Code [BGB] § 651, § 649). The statutory requirements and legal consequences apply in all other regards.

We assume no liability whatsoever in any other case. We have the right to raise the defense of contributory fault or contributory causation.

The statutory provisions determine when we are in default in delivery. The customer must issue a reminder in any event.

In the event of a culpable delay in delivery due to slight negligence, our liability for liquidated damages is limited to a flat 0.5% of the amount invoiced for the service affected by the delay for each completed week of delay, but no more than 5% in total. We may furnish proof that the damages are smaller. The damages will be applied to further claims for damages.

## 8 Limitation of Liability

Where liability is limited to the foreseeable damages or losses which are typical for the contract, our liability for each damage or loss occurrence is limited to EUR 100,000.00 for property damage and EUR 200,000.00 for other losses; the maximum total liability for all such damages and losses within a given calendar year is limited to twice these amounts. This limitation does not, however, apply to the extent that losses are covered by general liability insurance.

## 9 Limitation Period

In the absence of any agreement to the contrary, the limitation period for contractual and non-contractual claims for defects expires one year from the time of handover/delivery unless the law prescribes longer periods, e.g., in case of fraud, willful misconduct, gross negligence resulting in injury to life, limb and health, under the German Product Liability Act [ProdHaftG] or pursuant to German Civil Code [BGB] § 438(1)(2) (construction and construction materials) and § 634a(1)(2) (construction defects).

## 10 Non-Disclosure, Data Protection

The customer will keep all the contents of the contract strictly confidential, including, without limitation, prices, discounts, know-how and other trade secrets, and will refrain from disclosing or otherwise making available to third parties any information, documentation, drawings or other documents without our express written approval. This does not, however, apply to contents that are in the public domain without any violation of the non-disclosure obligation. The customer will impose the same non-disclosure obligation on its employees and associate companies and on third parties to whom the contents have to be disclosed.

We may use the customer (including its logo, brand) and the project as a reference as long as the customer does not object giving good cause.

The customer consents to our processing its data (communication data, responsible employees, nature and extent of the customer's purchase orders, etc.) for contract administration and execution. We may also use the data to notify the customer about our products and services if these products and services are typically used in connection with the products and services that the customer has purchased from us.

## 11 Final provisions

The Terms also apply to the customer's associate companies ["verbundene Unternehmen"] within the meaning of German Companies Act [AktG] § 15. The customer must bind its associate companies to comply with these Terms.

Any amendments and modifications hereto as well as legally significant notices and representations from the customer (e.g., setting a deadline, notice of defects, rescission or price reduction) that are not based on an individual agreement must be made in text form (e.g., fax, email, regular mail). This also applies to a waiver of the text form requirement. This is without prejudice to statutory form requirements.

If any provisions of these Terms are or become invalid, the validity of the remaining provisions will be unaffected thereby.

The customer may not assign to third parties any rights granted in this contract without our consent. German Commercial Code [HGB] § 354 a remains unaffected thereby.

German law applies unless national law inevitably conflicts with it.

In the absence of any agreement to the contrary and irrespective of the agreed upon Incoterm, the place of our registered office is the place of performance, also with respect to warranty claims. The place of our registered office is the place of performance if the customer is a merchant or a legal entity under public law. We are, however, entitled to bring action against the customer at the court that has jurisdiction over the place of the customer's residence.

The Zurich Arbitration Court has jurisdiction over all legal disputes with customers outside the EU (with the exception of Switzerland and the UK) arising out of or in relation to the contract in accordance with the Swiss Rules of International Arbitration of the Swiss Chamber of Commerce. The Arbitration Court consists of one arbitrator if the amount in dispute is up to EUR 100,000.00 before taxes and of three arbitrators if the amount is greater. The seat of arbitration is Zurich, Switzerland. Arbitration proceedings are conducted in the contract language. We are, however,



entitled to bring action against the customer at the court that has jurisdiction over the place of the customer's residence.

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