

# General Terms and Conditions of Business, Delivery and Payment

## §1 Scope

Our General Terms and Conditions of Business, Delivery and Payment (hereafter referred to as sales conditions) shall apply exclusively; conflicting or deviating terms or conditions by the customer do not apply, unless we have explicitly agreed to them in writing. Our sales conditions shall apply even in the event that we unreservedly deliver to the customer in the knowledge of conditions on the part of the customer that are inconsistent with or deviate from our sales conditions.

## §2 Offers

- (1) Our offers are subject to change and non-binding.
- (2) All documents belonging to the offer such as drawings and illustrations, measures and declarations of weight are provided on an approximate basis, but shall be as accurate as possible, and to this extent shall not be binding for us.
- (3) We reserve the right of property and copyright for all illustrations, drawings, calculations and other documents. This also applies to such written documents which have been designated as being "confidential". The customer may not pass any of these documents to third parties without our prior explicit and written consent.
- (4) We are entitled to provide contractual services differing, but equivalent to the offer, or to use equivalent products.

## §3 Ordering and conclusion of contract

- (1) Orders are only considered as accepted if they have been confirmed by us in written form. This also applies to contracts arranged by agents.
- (2) Even after a written order placement we are entitled to withdraw from the contract, if payment in instalments has been agreed and the customer is in default with the payment of two consecutive instalments or with a not insignificant proportion of the instalment due, or if the customer files a petition for the opening of insolvency proceedings or similar proceedings, or such a proceeding is commenced, or the opening of insolvency proceedings is rejected for lack of assets.
- (3) We are entitled to render contractual services through third parties (subcontractors).

## §4 Prices

- (1) Unless otherwise agreed in the contract, our prices are to be understood "ex factory" excluding packaging. The packaging shall be invoiced separately.
- (2) The contractual price is due at the time when we communicate the information that the contract goods are ready for collection at our place of business, insofar as we are entitled to carry out the delivery at the time of communicating such information.
- (3) We reserve the right to adjust our prices accordingly, if after the conclusion of the contract cost reductions or cost increases occur as a result of tariff agreements or changes in material-, energy- or freight costs, or if price reductions or increases occur due to the introduction or the change of public charges. Proof of this shall be given to the customer upon request.
- (4) Services that have not been included in the offer, but which are necessary for the performance of the order, or which are performed at the request of the customer, shall be invoiced additionally.
- (5) All prices are net prices and do not include statutory value added tax. The value added tax shall be charged at the legally applicable rate on the date of invoicing and shall be shown separately in the invoice.
- (6) The deduction of discount requires a specific written authorization.

## §5 Payment

- (1) Invoices are due for payment immediately after receipt without any deduction. The granting of any payment period requires our written consent. If the time allowed for payment is exceeded, we shall be entitled to charge interest on any overdue sums at 5% above the base rate. If we are in a position to prove a higher damage caused by default, we shall be entitled to claim for it. On the other hand, however, the customer is authorized to prove that no damage or only minor damage has resulted due to payment default.
- (2) Payment by accepted bill of exchange or customer's bill of exchange, cheques or bank transfers shall be considered as payment only after encashment and appropriate crediting on our account. The resulting charges and costs are to be paid by the customer.
- (3) The customer shall only be entitled to offsetting rights, if his counterclaims are undisputed or have been legally recognised, and if they are expressly acknowledged by us. In addition, the customer shall have a right of retention, if his counter-claim is based on the same contractual relationship.
- (4) If we have several outstanding claims against the customer so that the customer owes to us several debts at the same time, and payment by the customer is insufficient to settle all claims due, payment shall first be made to the debt owing, which offers us the least security; and among several claims which are equally secure, that one which is the most tedious to the customers shall be paid first. Among several equally tedious claims the oldest debt should be paid off, and among several claims which have the

same age we are entitled to demand payment of all these claims partially with the same rate.

## §6 Delivery and assembly

- (1) Unless otherwise provided by the contract, our prices are considered "ex factory". Insofar as the customer requires, we will cover the shipment with transport insurance. The costs incurred to this shall be borne by the customer.
- (2) If the customer is in default of acceptance or culpably violates other obligations to cooperate, we are entitled to demand compensation for losses incurred, including any extra expenses. In the case of any delay in acceptance on the part of the customer we are entitled to charge the customer for storage of the shipment at a rate of (net) EUR 3.50/m<sup>2</sup> per month. The customer shall be entitled to provide evidence that we have not suffered any losses or that the losses are significantly lower than the lump sum. We reserve the right to make further claims.
- (3) Insofar as the preconditions of §6 (2) exist, the risk of an accidental loss or the accidental deterioration of the contract goods shall pass to the customer at the moment that he is in default of acceptance or payment.
- (4) If we are prevented from fulfilling our contractual duties by the occurrence of unforeseeable extraordinary circumstances, and which we were unable to avoid even by using reasonable diligence in accordance with the circumstances of the case, irrespective of whether such circumstances occurred at our company or at our suppliers or subcontractors, e.g. operational interruptions, administrative interventions, delays in the delivery of raw materials and components or difficulties regarding energy supply, the delivery schedule shall be extended by a reasonable period, if delivery and performance do not become impossible. If delivery or performance is impossible or unreasonable due to the above mentioned circumstances, we shall be released from the obligation to deliver. Also in the event of strike or lockout the delivery period shall be extended by an appropriate term, unless delivery or performance becomes impossible. If delivery or performance is impossible or unreasonable, we shall be released from the obligation to deliver. We shall be obliged to advise the customer if any of the above mentioned extraordinary circumstances have occurred. If the delivery time is extended due to the circumstances mentioned above, or if we are released from our obligation to supply, then any rights to damage claims on the part of the customers shall be nullified.
- (5) Incomplete on-site preparatory work in responsibility of the customer, overdue inspection reports or approvals, subsequent changes or an extended scope of performance may cause deadline extensions or the postponement of schedules, which must then be re-negotiated.
- (6) In the event that a specific pick-up time and date has been arranged for the commencement of the loading at our plant and for the commencement of the unloading at the receiving location, a waiting period of 2 hours has to be included in the time schedule.
- (7) The customer has to ensure that the unloading on site can be carried out without interruptions.

## §7 Construction site conditions

- (1) It's a basic requirement that access roads, unloading areas and the hall floor must be dimensioned and paved in such a manner that they are easily accessible and can be used by heavy haulage trucks, long vehicles, truck cranes and mobile scaffoldings. If these prerequisites are not met and this leads to variances in costs and schedules, any extra costs resulting from this shall be at the customer's expense.
- (2) The implementation, adjustment and pouring of steel components in on-site recesses, as well as the pouring of columns are not included in our scope of service.

## §8 Acceptance

- (1) The customer is obliged to accept the contractual services as soon as notification has been provided of the completion thereof. This also applies to partial performances.
- (2) If acceptance is not required, performance will be deemed to have been accepted after 12 working days have expired and following written notification that performance has been completed.

## §9 Liability for defects

- (1) If in spite of all due care the contract goods have a defect, we shall be entitled, at our option, to provide supplementary performance by either eliminating the defect or by supplying new goods that are free from defect. In case of a correction of faults we shall only bear the expenses up to the amount of the contract goods.
- (2) If subsequent performance fails, the customer may demand a reduction in price or may withdraw from the contract, at his own choice.
- (3) We are liable within the legal provisions, insofar as the customer claims damage compensation which is based on intent or gross negligence of us, or intent or gross negligence of our representatives or vicarious agents. Insofar as we are not accused of wilful breach of contract or gross negligence on our part, our liability for damages shall be limited to the foreseeable typically occurring loss.

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- (4) We shall be liable in accordance with the legal provisions, if we violate culpably any essential contractual obligation. In this case the liability is limited to foreseeable losses that typically occur.
- (5) Liability arising from culpable injury to life, body or health shall remain unaffected. This shall also apply for compulsory liability in accordance with the Product Liability Act.
- (6) Liability shall be excluded in instances not covered in the above provisions.
- (7) The limitation period for claims made by the customer on account of material defects shall be time-barred after a period of one year after the contract goods have been transferred resp. delivered. This provision has its exceptions in defect claims made by users and damage claims arising from injuries to life, body or health and/or in cases where we are responsible for damage claims arising from a deliberate or grossly negligible violation of duty committed by us. The legal limitation periods shall be applicable in these cases.

### §10 Total liability

- (1) Any liability for damages other than that provided for in §9 is excluded regardless of the nature of the claim being asserted. This applies especially to all damage compensation claims arising from breaches of duty when the contract is concluded, damages because of other breaches of duty, or tortious claims for compensation for property damage in accordance with §823 of the German Civil Code (BGB).
- (2) The limitation set out in §10 (1) shall also apply insofar as the customer, instead of a claim for damages, demands reimbursement of useless expenditure rather than fulfilment of obligations.
- (3) Insofar as damage compensation claims towards us are excluded or limited, such exclusion or limitation shall also apply to personal compensatory damages liability of our employees, workers, staff members, representatives and vicarious agents.

### §11 Retention of title

- (1) We reserve the right of ownership to the contract goods until full and final settlement of all claims which have arisen or will arise under the respective legal transaction, including all claims which may arise from repeat orders. Insofar as we have agreed with the customer that payment shall be effected by means of a check-bill transaction, this right to retention extends to the payment of the respective bill of exchange accepted by us and does not expire as a result of the crediting of the receiving check by us. If the customer acts in violation of the contract, especially in the event of late payment, we shall be entitled to take back the contract goods. Taking back the contract goods represents withdrawal from the contract. On taking back the contract goods we shall be entitled to dispose of the goods, and the revenue of the disposal shall be deducted from the liabilities of the customer, minus appropriate disposal costs.
- (2) The customer is obliged to handle the contract goods with due care. Provided that service and inspection work is required, the customer must carry out such work at his own expense and in due time.
- (3) We are entitled to inspect the contract goods during working hours and in this regard the customer shall be notified by us 24 hours in advance. It is the responsibility of the customer to provide access to the contract goods, even in the case of the customer's absence.
- (4) In case of seizure of the goods or other interventions by third parties the customer must inform us immediately in writing, so that we can contest such actions in accordance with §771 of the German Civil Procedure Rules (ZPO). If the third party is incapable of reimbursing us judicial and extrajudicial cost for an action as per §771 of the German Civil Procedure Rules (ZPO), the customer shall be liable for the loss occurred to us.
- (5) The customer has the right to resell the contract goods in the ordinary course of business; however, the customer assigns to us already now all demands in the amount of the final commercial invoice (including value-added tax if applicable) of our demand that accrue to the customer by reason of the resale to its customer or third party, irrespective of whether the contract goods are sold with or without processing. The customer shall remain authorised for the collection of this claim even after the transfer. Our authorization to collect the receivables ourselves shall remain unaffected thereby; however, we commit ourselves not to collect the receivables as long as the customer complies with his payment obligations to us arising from the proceeds collected, the customer is not in default of payment, and if no application for the opening of composition or insolvency proceedings has been filed, or if discontinuance of payments is given. If, however, that is the case, we may demand that the customer discloses to us the assigned claims and their debtors, that he provides all the information necessary for the collection and surrenders all appropriate documents, and that he notifies the debtors (third parties) of the assignment.
- (6) The processing or modification of the contract goods by the customer will always be carried out for us. If the contract goods are processed with other items that are not our property, we shall acquire co-ownership rights in the new item in proportion to the ratio between the value of the contract goods (final invoice value including value added tax) and the other processed goods at the time of processing. Apart from this, the same

shall apply for the item resulting from such processing as for the contract goods delivered under reserve.

- (7) If the contract goods are inseparably blended, mixed or combined with other goods that we do not own, we shall acquire co-ownership of the new item in proportion to the ratio between the value of the contract goods (final invoice value including value added tax) and the other goods at the time of blending, mixing or combining. If the mixing takes place in such a manner that the product of the customer is to be regarded as the main product, then it is hereby agreed that the customer transfers co-ownership on a pro-rata basis. The customer shall preserve for us the sole or joint ownership.
- (8) As a security for our own claim, the customer also assigns to us the claims arising against a third party by combination of the contract goods with real property of a third party.
- (9) At the request of the customer we undertake to release the securities to which we are entitled insofar as the realisable value of our security exceeds the claims to be secured by more than 10%; the choice of the securities to be released is within our scope of responsibility.

### §12 Court of jurisdiction and place of performance

- (1) If the customer is a merchant, our registered office shall be the venue for legal disputes between the contracting parties. We shall also be entitled, however, to sue the customer at the customer's place of business.
- (2) Unless otherwise stipulated in the contract, our registered office shall be the place of performance.

### §13 Final provision

- (1) All supplements, amendments or ancillary agreements must be in written form in order to be deemed valid. This does not preclude the possibility of verbal subsidiary agreements.
- (2) All contractual relationships entered into by us are subject to German law.
- (3) If individual terms of this contract be or become inoperative, or if the agreement contains loopholes, this shall not affect the validity of the remaining provisions of this agreement.

Status as of 13<sup>th</sup> October 2016

**DERIX**