

## I. GENERAL/SCOPE

1. The following Terms and Conditions of Sale and Delivery apply exclusively to entrepreneurs, legal entities under public law or special funds under public law within the meaning of Section 310(1) of the German Civil Code (BGB) (hereinafter referred to as the "purchaser") and form the basis of all our offers and deliveries. These Terms and Conditions of Sale and Delivery shall also apply to all future transactions with the customer, provided that such transactions are of a similar nature.
2. Any deviating terms and conditions of the customer shall apply only if and to the extent that we have expressly accepted them in writing. Terms and conditions of the customer or a third party shall not apply, even if we do not specifically object to their validity in individual cases. Even if we refer to a letter containing or referring to the terms and conditions of the customer or a third party, this shall not constitute agreement to the validity of those terms and conditions.
3. Additions, ancillary agreements and amendments to the contractual arrangements made, including these General Terms and Conditions of Delivery, must be in writing to be valid.
4. Samples, quotations, drawings and embodied works produced by us remain our property. Where we produce data and information in electronic form, the copyright remains with us. This data and information may not be made available to third parties without our prior consent.

## II. CONCLUSION OF CONTRACT/SET-OFF/RETENTION

1. Unless expressly designated as binding, our quotations are subject to change in all respects.
2. In the case of offers designated as binding, a contract is concluded if our offer is accepted by the customer within a period of two weeks from the date of the offer. Upon expiry of this period, we are no longer bound by the offer. Late acceptance of the offer shall be deemed a new offer by the customer.
3. Set-off against counterclaims by the customer or the withholding of payments by the customer on account of such claims is only permissible insofar as the counterclaims are undisputed or have been established by a final and binding court decision, or arise from the same order under which the relevant delivery was made.

## III. TERMS OF PAYMENT

1. We charge our prices valid on the date of dispatch. Our prices are quoted "ex works" plus the statutory taxes, duties and charges applicable on the date of dispatch. Our prices do not include costs for packaging, freight insurance and other shipping costs.
2. Our invoices are due immediately and must be paid within 30 days without any discount. Where indicated on the invoice, we grant a discount of 2% of the invoice amount upon full payment within ten days.
3. In the interests of prompt order processing, we may, in individual cases, provide the customer with substantial advance services until the transfer of risk. Unless otherwise agreed, the agreed remuneration for goods which we do not offer in our catalogue or which we assemble for the customer (e.g. pre-assembled control units), as well as for orders from abroad, is to be paid to us without any deduction to our account as follows: 50% deposit upon order confirmation, 40% upon notification that the main parts are ready for dispatch, 10% upon delivery.
4. Unless otherwise stated, our claims are assigned to abcfinance GmbH under a factoring agreement. Payments against our invoices may therefore, unless otherwise agreed, be made exclusively to abcfinance GmbH to their account IBAN DE37 3707 0060 0194 0550 02, BIC: DEUTDE33, with discharging effect.

## IV. DELIVERY TIMES

1. The place of performance for all obligations of both contracting parties is Düsseldorf, unless otherwise specified.
2. Binding delivery dates or deadlines require express agreement. The delivery period shall commence at the earliest upon receipt of the order confirmation by the customer and is subject to the customer having provided us with all documents, approvals and clearances necessary for the execution of the order in a timely manner and having made any agreed down payments or provided payment guarantees. If the customer has not fulfilled their obligations to cooperate, the delivery period shall be extended accordingly, unless we are responsible for the delay.
3. The delivery period shall be deemed to have been met if the goods have left our warehouse within the specified period or if notification of readiness for dispatch has been given. Only working days shall count towards the delivery period.
4. If, after conclusion of the contract, the customer requests changes to the order which affect the delivery time, any delivery deadlines shall be renegotiated; in case of doubt, the delivery time shall be extended appropriately.
5. If dispatch is delayed for reasons for which the customer is responsible, the customer shall bear the costs incurred as a result of the delay, commencing one month after notification that the goods are ready for dispatch; this shall include, as a minimum, storage costs amounting to 0.5% of the net invoice amount for each month or part thereof. The customer retains the right to prove that the actual loss was less. This shall not affect any further statutory rights to which we are entitled in the event of default of acceptance (e.g. withdrawal, compensation).
6. If delivery is to take place more than six months after the conclusion of the contract, we shall be entitled, in the event of price increases by our suppliers, to demand negotiations regarding a price revision.
7. We are entitled to make partial deliveries, unless partial performance of the contract is clearly unreasonable for the customer, taking our interests into due account. Permissible partial deliveries shall be paid for separately. Packaging and shipping costs shall be charged only once.
8. Compliance with the delivery time is subject to correct and timely supply to us. This applies only in the event that the non-delivery, in particular where a corresponding covering transaction has been concluded with our supplier, is not attributable to us. In this case, we shall inform the customer immediately of the unavailability of the service.

9. We shall not be liable for the impossibility of delivery or for delays in delivery insofar as these are attributable to force majeure, industrial disputes or other events beyond our control (e.g. strikes and lawful lockouts, shortages of energy or raw materials, official measures, pandemics or epidemics). This also applies if such circumstances arise at our suppliers.

10. In the event of obstacles of a temporary nature, the delivery or performance periods shall be extended by the duration of the hindrance plus a reasonable start-up period. The contracting parties are obliged, within reasonable limits, to keep each other informed and to adapt their contractual obligations to the changed circumstances in an appropriate manner. If the hindrance lasts longer than three months, the contracting parties shall consult on a mutually agreed solution. If the hindrance lasts longer than twelve months, each contracting party shall be entitled, after setting a reasonable grace period, to withdraw from the contract with regard to the part not yet fulfilled. In this case, the customer shall not be entitled to claims for damages.

11. If the customer suffers loss or damage as a result of a delay in delivery for which we are responsible, the statutory provisions shall apply. If we are required to pay compensation under these provisions, such compensation shall amount to a maximum of 0.5% of the value of that part of the total delivery which, as a result of the delay, cannot be used on time or in accordance with the contract, for each full week of delay. In total, compensation is limited to 5% of the value of the total delivery. Any further claims for damages are excluded. The above limitations shall not apply where we are responsible for the delay due to wilful misconduct or gross negligence, in the case of a fixed-date transaction within the meaning of Section 286(2)(4) of the German Civil Code (BGG) or Section 376 of the German Commercial Code (HGB), or where the delay in delivery for which we are responsible is based on a culpable breach of a material contractual obligation. Except in the case of an intentional breach of contract for which we are responsible, our liability in such cases is limited to the damage that was foreseeable at the time of conclusion of the contract and typically occurs. We reserve the right to prove that the customer has suffered no damage or only damage less than the above-mentioned lump sum.

## V. TRANSFER OF RISK/DEFAULT OF ACCEPTANCE/ACCEPTANCE

1. Unless otherwise agreed, delivery shall be "ex warehouse".
2. The risk of accidental loss and accidental deterioration of the goods passes to the customer when we notify them that the goods are ready for dispatch, but at the latest when the goods leave our warehouse or the manufacturer's premises. This also applies to partial deliveries and where we have borne the shipping costs or the delivery and/or installation of the goods. We shall select the method of dispatch and packaging of the goods at our discretion. In particular, the choice of carrier is at our discretion.
3. Transport or other insurance shall only be taken out at the express request and expense of the customer.
4. The customer is obliged to inspect the external condition of the delivery immediately upon its arrival, to report any transport damage to the carrier and to us, and to secure evidence.
5. If the customer is in default of acceptance, fails to cooperate, or if our delivery is delayed for other reasons for which the customer is responsible, we shall be entitled to claim compensation for the resulting loss, including any additional costs incurred. We reserve the right to make further claims.
6. Upon delivery or installation of the delivery item, the customer is obliged to accept the goods, provided that such acceptance is contractually agreed in the individual case or required by law. Likewise, work carried out by us and self-contained partial services must be inspected and accepted by the customer immediately upon completion. Goods which we do not offer in our catalogue are considered special orders, which are only manufactured following acceptance of a sample produced by us. The delivery of pre-assembled control units shall only take place following prior acceptance by the customer at our factory.
7. The customer may not refuse acceptance in the event of a non-material defect. The delivery shall in any case be deemed accepted if the customer puts the delivery item into use and no defects are reported within a reasonable inspection period following commencement of use.
8. Our performance shall also be deemed accepted if, following delivery or installation of the delivery item, we have set the customer a reasonable deadline for acceptance and the customer does not refuse acceptance within this period, citing at least one defect. This also applies to partial services provided by us, as well as to samples and pre-assembled control units manufactured by us.

## VI. INSTALLATION AND ASSEMBLY OF THE DELIVERY ITEM/INSTALLATION SERVICES

1. We shall only install and assemble the delivery item if and to the extent that this has been agreed in the order. Otherwise, a separate agreement regarding the duration and costs incurred is required.
2. If we incur additional expenses due to circumstances falling within the customer's sphere of risk, we shall be entitled to charge the customer for the additional costs. This shall not apply if we are responsible for these circumstances.
3. In any event, the customer shall, at their own expense, provide or ensure the timely availability of:
  - Bricklayers, metalworkers and other skilled workers and labourers in the numbers we deem necessary
  - all earthworks and foundation work, including the necessary building materials
  - the equipment and tools required for installation and commissioning
  - the necessary documentation, cement, plaster and sealants
  - heating of the installation site to at least 16 degrees Celsius
  - the lighting and the necessary power supply, including the required connections
4. Our fitters will be dispatched at the customer's request and upon the customer's confirmation of receipt of the goods and fulfilment of the above obligations to provide the necessary facilities. The customer shall ensure that the installation site is made available to our fitters in a clean condition. The customer guarantees that the work on site will not be carried out

under dangerous or harmful conditions, and shall take all necessary measures to protect our fitters from any safety or health risks. The customer further guarantees that our fitters will be accurately and fully informed of the safety regulations applicable at the installation site.

5. The work carried out and the acceptance of the subject matter of the contract must be certified in writing by the customer to our fitters. Waiting times for our fitters for which we are not responsible, as well as their engagement in work other than that for which we are responsible, shall be charged to the customer separately.

6. If the customer fails to fulfil, or only partially fulfils, their obligations to cooperate and provide materials, or if we are prevented from carrying out the work entrusted to us by the customer as planned due to circumstances falling within the customer's sphere of risk, we shall be entitled to claim reasonable compensation for the additional expenses incurred as a result, in addition to the agreed remuneration.

## VII. RETENTION OF TITLE

1. The goods remain our property until all outstanding claims arising from the business relationship have been paid in full. This also applies if individual or all claims have been included in a current account and the balance has been calculated and accepted (current account). If the customer defaults on payment, we are entitled to withdraw from the contract and take back the delivered goods. In this case, the customer is not entitled to resell the goods or pass them on to third parties. We undertake to release the securities to which we are entitled – in whole or in part, as the case may be – at the purchaser's request, provided that their total market value exceeds the sum of all outstanding claims of the purchaser arising from the business relationship by more than 10% (or by more than 50% where there is a risk of realisation). Upon release, we shall be entitled to choose between various security interests.

2. In the event of serious breaches of contract or a significant deterioration in the customer's financial circumstances, the customer shall be obliged to surrender the goods to us. In such a case, the customer hereby authorises us to collect the goods in question from their premises. Any costs associated with this shall be borne by the customer. Our assertion of the retention of title or the repossession of the goods subject to retention of title by us does not constitute a withdrawal from the contract, unless we have expressly declared this.

3. Our retention of title also extends to the products created by the processing, mixing or combining of our goods, up to their full value. If the processing involves materials or goods belonging to several owners, or if the value of the processed item exceeds the value of our goods subject to retention of title, we shall acquire co-ownership (fractional ownership) of the newly created item in proportion to the value of the goods subject to retention of title relative to the value of the newly created item. It is agreed that the processing, mixing or combining shall be carried out in our name and on our behalf as the manufacturer. If the goods subject to retention of title are combined with other items by the customer to form a single item, inseparably mixed or inseparably blended, and if one of the other items is to be regarded as the principal item, the purchaser hereby transfers to us, by way of security, a proportionate co-ownership interest in the resulting item in the ratio of the value of our goods subject to retention of title to the other combined, mixed or blended items at the time of the combination, mixing or blending. We accept the transfer of ownership. The transfer of physical possession is replaced by the fact that the customer shall store the goods for us free of charge with the care of a prudent businessman.

4. If the customer resells the goods in accordance with their intended purpose, they hereby assign to us, with immediate effect, all claims arising from such resale against their customers, together with all ancillary rights, until all claims have been settled. We accept the assignment. Where there are reasonable grounds, in particular in the event of default in payment or an application for the opening of insolvency proceedings, the customer shall, at our request, be obliged to notify third-party purchasers of the assignment and to provide us with the information and documents necessary for us to assert our rights.

5. In the event of the processing, mixing or combining of our goods, the purchaser undertakes to sell the delivered goods only on the condition that he, for his part, reserves title to the resulting products until the purchase price has been paid in full, and agrees that, in the event that the retention of title expires as a result of resale, combination, processing or mixing, ownership of the new item and the resulting claim shall take its place.

6. The purchaser is obliged to treat the goods subject to retention of title with due care and to store them properly; in particular, they are obliged to insure the goods subject to retention of title at their own expense against fire, water and theft at replacement value. At our request, the purchaser must provide proof of the conclusion of the relevant insurance contract and assigns the claims arising from the insurance contract to us in advance.

7. If the law applicable to the place where the goods are located does not recognise the retention of title provided for in this section, but that law permits us to reserve other rights in the goods, we may exercise all such rights. The customer is obliged to cooperate with any measures we may take to protect our right of ownership or – in its place – any other comparable right to the delivery item.

8. If goods subject to retention of title or other securities granted to us in accordance with the above provisions are jeopardised by enforcement measures taken by third parties or in any other way, the customer must draw attention to our rights. The customer must notify us immediately in writing if an application has been made to open insolvency proceedings in respect of their assets or if enforcement measures by third parties are taken against goods belonging to us. In the latter case, the customer must immediately provide us with the documents and other information required for an intervention (third-party objection).

## VIII. WARRANTY

1. Provided that the contractual relationship between us and the customer is a contract of sale or a contract for work and materials, we shall be liable for material defects and defects of title in the delivery item existing at the time of the passing of risk in accordance with the provisions set out below.

2. Unless otherwise agreed, the contractually agreed quality of the goods to be delivered is determined by our product specifications in force at the time of conclusion of the contract.

3. Notwithstanding the provision in Section 377 of the German Commercial Code (HGB), the customer must notify us in writing of any apparent defects, shortfalls or incorrect deliveries without delay, but no later than ten days after delivery and in any event prior to combination, mixing, processing or installation. Otherwise, the delivery item shall be deemed to have been approved, unless we or our legal representatives or vicarious agents are guilty of fraudulent misrepresentation. Hidden defects must also be notified to us in writing without delay, but no later than ten days after their discovery.

4. Subject to the following provisions of this paragraph, the limitation period for the customer's claims for defects is one year, calculated from the statutory commencement of the limitation period. Should we have fraudulently concealed a defect, the statutory limitation periods shall apply to any claims for damages. The statutory time limits shall also apply to the limitation of any claims for damages by the customer arising from defects for which we are liable due to intent or gross negligence, or where the claim for damages is based on injury to life, limb or health.

5. Our warranty for material defects and defects of title is limited to subsequent performance. Within the scope of this obligation to provide subsequent performance, we are entitled, at our discretion, to repair the goods or supply a replacement; that is to say, parts that were defective at the time of transfer of risk shall, at our discretion, be repaired or replaced by us. Replaced parts shall become our property or remain our property and must be returned to us at our expense upon request. If we fail to fulfil our obligation to remedy the defect within a reasonable period, or if a repair fails repeatedly, the customer shall be entitled to reduce the purchase price or to withdraw from the contract. Withdrawal from the contract is excluded if the defect is merely minor. Insofar as we have made defect-free partial deliveries, withdrawal from the entire contract is only permissible if the purchaser's interest in the partial deliveries made has demonstrably ceased to exist or if, taking into account the interests of both parties, it is clearly unreasonable for the purchaser to continue with the contract. Further claims, in particular claims for reimbursement of expenses or damages, shall only exist within the framework of the provisions of Section IX below.

6. We shall reimburse expenses necessary for inspection purposes and for subsequent performance (transport, labour and material costs, as well as any removal and installation costs) in accordance with statutory provisions and these General Terms and Conditions of Sale, provided that there is a defect relevant to the warranty that is attributable. However, we shall only bear transport costs to and from the location to which the goods purchased from us were delivered in accordance with their intended purpose, and up to a maximum of the value of the delivery item in a defect-free condition.

7. Our warranty does not extend to the suitability of the goods for purposes other than their intended or customary use, unless this has been expressly agreed in writing. Furthermore, we accept no liability for defects attributable to:

- unsuitable or improper use of the goods
- modifications or repair work carried out without authorisation
- incorrect assembly or commissioning by the customer or third parties
- incorrect handling or operation and natural wear and tear, in particular due to excessive strain
- chemical, electrochemical, electronic and electrical influences – provided these are not attributable to us

8. Furthermore, no warranty claims shall exist if the customer modifies the delivered item without authorisation or has it modified by third parties and/or replaces parts of the delivered item not with original spare parts from us, but with spare parts from a third party, unless this is necessary due to a delay on our part in fulfilling an obligation incumbent upon us, the fruitless expiry of a grace period set by the customer, or other important reasons, in order to enable the contractual use of the delivery item. This shall not apply if the customer proves that the defects in question were not caused by the modifications to the delivery item carried out by the customer or the third party, or by the third-party spare parts, unless otherwise provided for in Section VIII below.

9. We accept no liability for defects or damage arising through no fault of our own due to unsuitable or improper use, faulty assembly or commissioning, excessive strain, natural wear and tear, faulty or negligent handling, unsuitable operating materials, or chemical, electrochemical or electrical influences (insofar as these are not contractually stipulated).

10. If rectification work is carried out by the customer or third parties without our express consent, we shall not be obliged to carry out further rectification work on this specific item, unless the customer can prove that their own attempt at rectification was carried out properly and that the defect remaining thereafter was not influenced by this attempt at rectification.

## IX. LIABILITY

1. Claims for damages by the customer for compensation for direct and indirect damage, including incidental and consequential damage, are excluded – regardless of the legal basis – subject to the following provisions.

2. The purchaser's claims shall remain unaffected if

- a) the damage is due to wilful misconduct or gross negligence on our part, on the part of our legal representatives or vicarious agents
- b) a culpable breach of duty on our part, or on the part of our legal representatives or vicarious agents, has resulted in bodily injury or damage to health
- c) we have fraudulently concealed a legal or material defect, or insofar as we have given a guarantee
- d) we are strictly liable for other reasons, e.g. under the Product Liability Act
- e) the damage is attributable at least to a negligent breach of essential contractual obligations, the fulfilment of which is essential for the proper performance of the contract and on the observance of which the contracting party regularly relies and is entitled to rely (so-called "cardinal obligations"), by us, our legal representatives or vicarious agents

3. In the event of a breach of essential contractual obligations, our liability shall be limited to the reasonably foreseeable damage typical for this type of contract, unless we are guilty of intent or gross negligence or are liable for injury to life, limb or health. The amount of damage typical for this type of contract and reasonably foreseeable shall be set at the contract value of the service concerned.

4. Should the customer wish to make a claim against us in accordance with the above provisions, they shall inform and consult us immediately and comprehensively in writing. The customer must give us the opportunity to investigate the claim.

#### **X. USE OF SOFTWARE**

1. Insofar as the scope of delivery includes software, the customer is granted a non-exclusive right to use the delivered software, including its documentation. It is provided exclusively for use on the delivery item for which it is intended. Use of the software on more than one system is prohibited.

2. The customer may only reproduce, adapt, translate or convert the software from object code to source code to the extent permitted by law (Sections 69a et seq. of the German Copyright Act (UrhG)). The customer undertakes not to remove manufacturer's details – in particular copyright notices – or to alter them without our prior express consent.

3. All other rights to the software and the documentation, including copies, remain with us or the software supplier. The granting of sub-licences is not permitted.

4. We guarantee that the software provided is free from reproducible defects. However, this guarantee is subject to the software being used in accordance with the terms of the contract. The customer must notify us immediately of any software defects. We will rectify any reported defects by means of subsequent performance. If it proves impossible to rectify a defect, we are entitled to develop an alternative solution. If we fail to fulfil our obligation to remedy the defect within a reasonable period, or if a remedy fails repeatedly, the customer is entitled to reduce the purchase price or withdraw from the contract. Withdrawal from the contract is excluded if the defect is merely minor. We do not guarantee that the software provided meets the customer's specific requirements.

#### **XI. MISCELLANEOUS**

1. The place of jurisdiction for all disputes arising from the business relationship is our registered office (Düsseldorf). However, we are also entitled to bring an action at the place of performance of the delivery obligation in accordance with these General Terms and Conditions of Sale or in accordance with a prior individual agreement, or at the customer's general place of jurisdiction.

2. The law of the Federal Republic of Germany shall apply exclusively to all disputes arising from contracts to which these terms and conditions apply, and to all disputes arising from the business relationship between us and the customer. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) and of private international law is excluded.

3. Should any of the above provisions be or become invalid, this shall not affect the validity of the remaining provisions.