

# General Terms and Conditions of Sale

## Geissel GmbH, Brühlstrasse 28, 75417 Mühlacker, Germany

### 1. Scope

- 1.1 The present General Terms and Conditions of Sale shall only apply with respect to entrepreneurs within the meaning of § 14 German Civil Code [BGB], they shall not apply to consumers.
- 1.2 All deliveries and services under specific-order contract performed by us shall be governed by these General Terms and Conditions of Sale exclusively. We do not acknowledge any terms to the contrary or any deviating terms used by the customer, unless such have been expressly approved by us in writing.
- 1.3 Our General Terms and Conditions of Sale shall also apply to future business, even if in specific cases we have made no reference to the same.
- 1.4 Any individual agreements entered into with the supplier in a given specific case (including collateral agreements, supplements and modifications) shall always have priority over these General Terms and Conditions of Sale. The contents of such individual agreements shall be governed by a written contract or our written confirmation.

### 2. Offer and Conclusion of Contract

- 2.1 Our offers shall be without obligation and shall not be binding unless they have been expressly stipulated to be binding.
- 2.2 Each order shall be governed by our written acknowledgement of order. If the customer has any objections as to the contents of the acknowledgement of order, he must oppose such acknowledgement of order without delay. Otherwise the contract shall take effect in accordance with the acknowledgement of order.

### 3. Delivery

- 3.1 Unless otherwise agreed in writing and unless such is unacceptable to the customer, production-related quantity deviations of up to +/- 10% shall be acceptable in deliveries. The time of delivery and time of performance (hereinafter referred to as "delivery period") shall be deemed met by us if, by expiry of the same, the delivery item has left our works.
- 3.2 If we are not able to meet the delivery period on account of Force Majeure, labour disputes or other events beyond our control which we could not foresee the delivery period shall automatically be extended appropriately. We will communicate without delay the beginning and end of such event to the customer.
- 3.3 Compliance with the delivery period shall be subject to the condition that we are properly supplied by our suppliers in a timely manner. We shall notify the customer immediately if compromising circumstances occur or if it becomes apparent to us that compliance with the delivery period agreed with the customer may be jeopardized as we are not being properly supplied by our suppliers in a timely manner. In such case, we will pro-actively keep the customer informed of the latest status.
- 3.4 If delivery is delayed for reasons for which we are responsible, we shall be liable, in cases of gross negligence, for the damage suffered by the customer on account of the delay. In the event of slight negligence, our liability with regard to ascertained damage caused by the delay shall be limited to the payment of liquidated damages of 0.5 % for every full week's delay up to a maximum of 5 % of the price of that part of the delivery which, on account of the delay, could not be put to the intended use.

However, any further claims from delay in delivery shall be based on item 7 of the present General Terms and Conditions of Sale exclusively.

- 3.5 We shall be entitled to effect partial deliveries if such can be reasonably expected of the customer.

### 4. Passing of Risk and Dispatch

- 4.1 Unless otherwise agreed in individual cases, our delivery shall be "ex works"; the passing of risk shall also be subject to these terms, also if we have assumed responsibility for further services, such as transportation or shipping costs.

If sales involving the carriage of goods have been agreed the risk shall pass to the customer when the goods are handed over to the shipping agent, carrier or the person designated for performing transportation. The Incoterms 2010 shall apply.

- 4.2 Packaging and mode of shipment shall be determined by us at our best discretion. Packaging shall be charged at cost price.

### 5. Prices / Payment / Off-setting and Retention of Title

- 5.1 Each order shall be subject to the prices quoted in our acknowledgement of order. Unless otherwise agreed, the prices shall be ex works and exclude packaging, freight, postage, insurance, customs duty, other expenses and the statutory value-added-tax, which will be charged separately.
- 5.2 Invoices shall be payable in Mühlacker within the agreed period allowed for payment. If, in exceptional cases, we accept payment by bill of exchange or cheque, payment shall only be deemed effected when the bills of exchange or cheques have been cashed. All and any costs incurred by us on account of the acceptance of bills of exchange or cheques shall be borne by the customer.
- 5.3 The customer may only offset counterclaims that are undisputed or recognised by declaratory judgement. The customer may only enforce a right of retention if such claim is based on the same contractual relationship.
- 5.4 If the delivery item or the agreed service is delivered or rendered within 4 months after conclusion of contract we shall be bound to the agreed prices. If longer delivery periods have been agreed or if the delivery period is extended for reasons for which we are not responsible we shall be entitled to adjust the prices accordingly, if, after conclusion of the contract, any cost reductions or cost increases arise (particularly due to collective agreements or increases in material costs). Upon request, we shall provide evidence of such changes to the customer.

### 6. Liability for Defects

- 6.1 Upon delivery, the customer is under the obligation to inspect the delivery item for defects without delay. Any obvious defects must be notified to us immediately and in writing. Any hidden defects must be communicated to us in writing as soon as they are discovered. The deadlines indicated in the aforesaid sentences 2 and 3 shall be deemed observed if the notification is dispatched within such deadline.
- 6.2 Any parts of the deliverable which are demonstrably defective as early as at the passing of risk shall, at our option, either be repaired or a new item be sent (subsequent performance). The customer must grant us a reasonable time period and the opportunity to effect such subsequent performance.
- 6.3 If subsequent performance fails, the customer shall be entitled to resort to the other claims for defects laid down by law. The customer shall not be entitled to withdraw from the contract in the event of minor defects. In other respects, the specific provisions stipulated under item 7 of these General Terms and Conditions of Sale shall apply.

### 7. Other Liability

- 7.1 In the event of intent and gross negligence we shall be liable for damages, irrespective of the legal reason upon which these are based. We shall be liable for ordinary negligence only in the following cases:

- for damage resulting from the injury to life, limb or health of a person;
- for damage resulting from the breach of fundamental contractual obligations which go to the root of the contract (obligations, the performance of which are essential for the proper execution of the contract and the observance of which the customer regularly relies and may rely upon); in such case, however, our liability shall be limited to the compensation of the foreseeable damage that typically occurs.

7.2 The present limitations of liability shall not apply if we have fraudulently concealed a defect or have furnished an express guarantee as well as for liability under the German Product Liability Act.

7.3 The legal provisions on burden of proof shall be unaffected by the aforesaid provisions.

## 8. Statute of Limitations

8.1 Unless otherwise provided in the following, the general period of limitation for claims of the customer due to material or legal defects shall be 12 months from delivery. Such limitation period shall also apply to the contractual and extra-contractual claims for damages of the customer which are based on defective goods.

8.2 The statutory periods of limitation shall apply

- for damages resulting from the injury to life, limb or health;
- for liability under the German Product Liability Act;
- if we have fraudulently concealed a defect;
- if we have furnished a guarantee;
- if the item delivered by us is a building or an object that, in conformity with its customary manner of utilization, has been used for a building and caused the defectiveness of the building;
- for recourse claims against the supplier in the event of end delivery to a consumer (§ 479 German Civil Code).

## 9. Retention of Title

9.1 We retain sole title to all delivery items until each and every claim we may have against the customer from the business relationship has been met in full (hereinafter referred to as "reserved goods" = goods to which title is retained - *German "Vorbehaltsware"*). In case of current account all reserved goods shall serve as security for the amount outstanding.

9.2 The customer undertakes to handle the reserved goods with due care and to have them sufficiently insured against the usual risks (theft, fire, water etc.). For the duration of the retention of title, the customer may not pledge the delivered reserved goods or transfer ownership of the same by way of security, neither in their entirety nor in part. In case we deliver the delivery items to a third party and not to the customer himself the customer undertakes to explicitly notify such third party of our retention of title and of the fact that such third party is neither allowed to pledge the delivery items, nor transfer ownership thereof by way of security.

9.3 If the reserved goods are pledged by any third party or in the event of other third-party interventions the customer undertakes to point out our title to the goods and must notify us immediately so that we can enforce our ownership rights. The customer shall bear all costs which need to be incurred in order to ensure that such intervention discontinues and to ensure the recovery of the reserved goods, to the extent that such costs cannot be collected from such third party.

9.4 Subject to our revocation, the customer shall be entitled to process and sell the reserved goods within the framework of his ordinary course of business. We shall only revoke such right for good cause. Good cause shall include but not be limited to the customer being in default of payment, the customer having suspended his payments, if the initiation of insolvency proceedings has been applied for or if there are other well-founded grounds which suggest that the financial situation of the customer is deteriorating, thus jeopardising our claim for payment.

9.5 Subject to admissible revocation for good cause, the customer shall be entitled to dispose of the reserved goods within the framework of his ordinary course of business. He shall, in particular, not be permitted to pledge the goods or use them as security. The customer may only pass on reserved goods to the purchaser if the customer is not in default with respect to his obligations to us.

In the event of resale, as early as with the present the customer shall assign to us all and any claims from such resale, in particular claims for payment, but also other claims relating to the sale, irrespective of whether the delivery item was sold without or after processing.

The assigned claims shall serve as security for us to the same extent as the reserved goods. If the reserved goods are sold by the customer together with other goods which have not been purchased from us the claim from such resale shall be assigned to us in proportion to the value of the invoiced amount of the reserved goods to the values of the invoiced amounts of the other goods used. If goods are sold in which we have co-ownership shares the part equivalent to our co-ownership share shall be assigned to us.

Subject to our admissible revocation for good cause, the customer shall be entitled to collect the assigned claims on a fiduciary basis. For good cause we shall have the right to notify third-party debtors of the assignment of claims also on behalf of the customer. Notification of the assignment to a third-party debtor shall end the customer's right to collect the debt. If the right to collect the debt is revoked, we can require the customer to disclose to us the claims assigned as well as the debtors thereof, to provide us with all information required for collection, to hand over all relevant documents and to notify the debtors of the assignment.

9.6 If the customer breaches the contract in any form, in particular if the customer is in default of payment we shall have the right to take back the reserved goods after setting a reasonable deadline for performance/payment. The customer shall bear all costs incurred in taking back the goods. If we take back or pledge the reserved goods such shall constitute a withdrawal from the contract. We shall be entitled to dispose of the reserved goods taken back by us. Any proceeds from such disposal which may be left after a reasonable amount has been deducted for the costs of the disposal shall be set off against the amounts owed to us by the customer.

9.7 If or to the extent that a retention of title or an assignment of claims is ineffective or unenforceable due to mandatory provisions of foreign law, the security corresponding to retention of title or assignment of claims applicable in this area shall be deemed as agreed. If, according to this, the assistance of the customer is required, he must take all steps and make all declarations necessary in order to establish and maintain the security.

9.8 Upon customer request, we undertake to release the security due to us if its value exceeds the value of the claims to be secured by more than 20 %; we shall have the right to select the securities to be released.

## 10. Information provided by the Customer / Industrial Property Rights

10.1 The customer shall be responsible for ensuring that all records provided by him, such as drawings, calculations, dimensions, samples etc. are correct.

10.2 If we have manufactured goods to the specifications provided by the customer the customer shall be liable for ensuring that no industrial property rights of any third party are infringed thereby. Otherwise, the customer undertakes to indemnify and hold us harmless from and against all and any claims of the respective owners of such rights as well as from and against all and any costs incurred thereby.

## 11. Place of Performance, Place of Jurisdiction, Applicable Law

11.1 Unless otherwise agreed, place of performance for delivery, payment and all and any other obligations arising out of the contractual relationship shall be our principal place of business.

11.2 If the customer is a merchant or a legal person under public law place of jurisdiction for all and any legal disputes arising out of the contractual relationship as well as its creation and effectiveness shall for both parties be our principal place of business. At our discretion, we may also bring an action at the supplier's seat.

11.3 The contractual relationship shall be governed by German law. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.