

# General Terms and Conditions of Sale and Delivery

## 1. Scope of validity

(1) These General Terms and Conditions of Business apply to entrepreneurs, legal persons under public law or special funds governed by public law (hereinafter referred to as "Customer").

(2) Our deliveries and services are carried out and our offers made based on these Terms and Conditions of Sale and Delivery. They also apply to any future transactions with the Customer, in so far as legal transactions of the same or a related nature are concerned.

(3) Any conflicting terms and conditions of the Customer or any which deviate from our General Terms and Conditions of Business are not recognised, unless we expressly agree that they are valid.

## 2. Offer and conclusion of contract

(1) Our offers are subject to change without notice and non-binding, unless we have specifically designated them binding.

(2) We may accept an order from the Customer, which is to be classed as an offer to conclude a contract, within 10 days

- by forwarding a written confirmation; or
- by forwarding a confirmation of the e-mail; or
- by carrying out the contractual services.

(3) Any drawings, figures, measurements, weights or any other performance data, shall only be binding if they have been expressly agreed upon in writing.

## 3. Delivery

(1) Our delivery obligations are subject to the reservation of correct and timely delivery to us by our suppliers, unless the incorrect or delayed supplies from our suppliers are our own fault.

(2) We shall only be entitled to make partial deliveries and provide partial services if the latter are of interest to the Customer in line with the contractual purpose and no considerable additional expenditure is incurred to the Customer as a result.

(3) Any details given on delivery times are approximate, unless anything to the contrary has been agreed with the Customer. Delivery deadlines will only commence once all details concerning the execution have been clarified, and a further prerequisite for them is the timely and proper fulfilment of the Customer's obligations.

(4) Should the Customer fall into arrears in calling off, accepting or picking up the goods, we shall be entitled to require compensation for any damage incurred to us. Upon a delay in acceptance occurring, the risk of accidental impairment and accidental loss shall pass to the Customer.

(5) In the event of a delay in delivery not caused deliberately or due to gross negligence by us, we shall be liable for each complete week of delay within the scope of a flat-rate compensation payment for delay in the amount of 3% of the delivery value, however a maximum of not more than 15% of the delivery value.

(6) Any further statutory claims and rights on the part of the Customer due to a delay in delivery shall not be affected thereby.

#### **4. Prices and payment**

(1) Our prices are understood to be 'ex works or warehouse' plus freight and the respective applicable VAT. We charge for the usual packaging for transport/shipping at cost price, unless anything to the contrary has been agreed with the Customer.

(2) Our invoices are due for payment immediately, and without any deduction. Unless anything to the contrary has been agreed, the order is to be paid for by advance bank transfer.

(3) Cancellation is not possible free of charge. Any subsequent amendment of the content of the contract, in particular any amendment of the timeframe or geographic general conditions, shall only be possible following individual consultation, and only in return for payment of a surcharge. In the event of any amendments at short notice with lead times of less than 12 weeks, the Customer will incur a 100% surcharge. The deployment of technicians beyond the scope of mere installation shall be invoiced in accordance with expenditure at the respective applicable hourly or daily rates plus any travelling expenses and costs of overnight stay.

(4) The Customer may only offset any claims against undisputed counter-claims or any that have been recognised by us or established with legal finality. The Customer shall only be authorised to exercise a right of retention to the extent that its counter-claim is based on the same contractual relationship.

(5) Should the Customer fall into arrears with a payment, the statutory regulations shall apply.

#### **5. Passing of risk upon the goods being shipped**

(1) Should the goods be shipped to the Customer at the latter's own request, the risk of accidental loss or deterioration of the goods shall pass to the Customer upon the goods being shipped, however at the latest upon the goods leaving the factory/warehouse. The latter shall apply irrespective of who bears the freight charges.

The latter shall in particular apply to the accidental destruction or impairment of any installation tools that have been sent along with the goods.

(2) Should the shipping be delayed at the Customer's request, the risk shall pass to the Customer upon readiness for shipping being notified.

#### **6. Retention of title**

(1) Until such time as all the receivables incurred and arising based on the business connection have been paid in full, the goods delivered shall remain our property (goods subject to retention of title). In the event of there being a number of receivables or an open account

relationship, the retention of title shall be deemed security for the outstanding balance, even if individual deliveries of goods have already been paid.

(2) In the event of anti-contractual conduct on the part of the Customer, e.g. a delay in payment, after previously setting a reasonable deadline we shall be entitled to take back the retained goods. Should we take back the retained goods, this shall constitute a withdrawal from the agreement. We shall be entitled to utilise the retained goods after taking them back. Following deduction of a reasonable amount for the utilisation costs, the utilisation proceeds shall be offset with the amount owed to us by the Customer.

(3) Should any third parties access the retained goods, in particular in order to exercise levy of execution, the Customer shall make reference to our ownership and inform us without delay, so that we can enforce our ownership rights.

(4) The Customer shall be entitled to process and sell the retained goods in the orderly course of business, as long as it is not in arrears with payment. Pawning or transfer of ownership by way of security shall not be admissible. The Customer already at this point assigns to us in full by way of security any claims arising from the resale or made on any other legal basis relating to the retained goods (such as insurance, tort). We revocably authorise the Customer to collect the receivables assigned to us on its own account, in its own name. The authority to collect shall lapse if the Customer fails to duly comply with its payment obligations or gets into financial difficulties, any enforcement measures are taken against it or judicial insolvency proceedings are instituted over its assets, or the institution of such is declined due to lack of funds.

(5) Should the goods be processed or altered in any way, it shall always be carried out on behalf of us, as the manufacturer, without, however, imposing any obligation on us. Should the delivery items be processed together with other items, not belonging to us, we shall acquire co-ownership in the new item in the proportion of the value of the delivery items to the other items processed at the time of processing. Should the delivery items be connected or inseparably mixed with any other items, not belonging to us, we shall acquire co-ownership in the new item in the proportion of the value of the delivery items to the other items connected or mixed with the delivery items. Should the Customer's item be considered the main item when the items are connected or mixed, it shall be deemed to have been agreed that the Customer assigns co-ownership in the new item to us on a pro rata basis. The Customer shall keep the jointly owned property that has arisen in this way safe on our behalf.

(6) We shall be obliged to release the securities to which we are entitled in so far as the realisable value of our securities exceeds the claims to be secured by more than 10%. We shall, in that respect, be free to choose which securities are to be released.

## **7. Warranty**

(1) In the event of any infringement of a contractual obligation, the Customer shall be entitled to the statutory rights from us, in line with the following provisions.

(2) The Customer shall only be entitled to assert any warranty claims if it has complied with its inspection and reporting obligations pursuant to Sec. 377 German Commercial Code (*HGB*).

(3) In the event of complaints being filed justifiably and in good time, the Customer shall, during the warranty period, have a claim to subsequent fulfilment. We shall be free to decide on the type of subsequent fulfilment – whether it is remedying of the defect or delivery of an item that is free of defects. Should the subsequent fulfilment fail or should any further attempts at subsequent fulfilment be unacceptable to the Customer, the Customer shall be entitled to reduce the invoice or cancel the contract. In the event of subsequent improvement, the subsequent fulfilment shall be deemed to have failed upon the third unsuccessful attempt, unless anything else in particular emerges in connection with the nature of the item or the defect or any other circumstances.

(4) Should the Customer receive a complaint from its customer or a consumer due to a defect in the goods supplied which already existed at the time of the passing of risk, or from a consumer as an end customer, based on which complaint a claim is made against the Customer, the Customer's statutory rights of recourse vis-à-vis us under Secs. 478, 479 German Civil Code (*BGB*) shall not be affected thereby.

(5) The Customer may only assert any claims for compensation for damage subject to the terms and conditions laid down in Clause 8 if the subsequent fulfilment has failed or we refuse to carry out subsequent fulfilment. The Customer's right to assert further compensation for damage subject to the terms and conditions laid down in Clause 8 shall not be affected thereby.

(6) Any claims made against us due to defects may only be asserted by the Customer and cannot be assigned.

(7) The period of limitation for claims for defects is one year as from the passing of risk. This shall not apply if the law pursuant to Secs. 438(1)(2) (Structures and Tangible Property for Structures), 478, 479 (Recourse against Suppliers) and 634(a)(1)(2) German Civil Code (*BGB*) (Construction Defects) stipulates longer deadlines, or in cases of injury to life, the body or the health, in the case of wilful or grossly negligent breach of duty by us or in the case of a defect being fraudulently concealed.

## **8. Absence of the artist booked**

In the event of the artist booked by the Customer falling sick or, for reasons that are not our fault, not turning up on time to provide the agreed services, a postponement of the start date shall be agreed. Any costs incurred to the Customer due to the postponement will not be reimbursed by us.

## **9. Technical repair and maintenance**

(1) The Customer undertakes to keep a technically trained employee at hand, who will undertake the technical repair and maintenance of the equipment in line with our instructions. The Customer undertakes

- to check the safety of the equipment daily in order to avoid any injury to users or damage to the equipment;
- to inform us without delay about any malfunctioning of the equipment, shut down the equipment and inform us immediately that the equipment has been shut down.

(2) Any technical prerequisites arising from the purchase order, as well as structural conditions that are to be provided by the Customer, are to be created and evidenced within the contractually agreed timeframe. Any second visit due to a lack of prerequisites shall be at the Customer's expense. A flat-rate amount of € 50.00 net plus travelling expenses and the costs of overnight stay shall be due per hour for each employee deployed in such a case. A working day is assumed to be 10 hours.

(3) The Customer shall ensure, at its own expense, that a room temperature of at least 16°C, as well as dry ambient air, exists for the period of the installation work and creation of the artwork.

(4) The Customer undertakes to protect any installation tools sent along with the items from the influences of the weather and theft.

## **10. Liability**

(1) We shall only be liable for any losses incurred to the extent that the latter are based on an infringement of a cardinal obligation or on wilful or grossly negligent conduct by us, our legal representatives or our vicarious agents. Should a cardinal obligation be infringed in a slightly negligent manner, our liability shall be limited to the foreseeable contractually typical damage. A cardinal obligation exists in the case of obligations, the fulfilment of which makes it possible to duly execute the agreement in the first place, and adherence to which the Customer trusted, and may trust.

(2) Any liability to compensate the Customer for damages extending beyond that shall be excluded. Any liability due to culpable injury to life, the body or the health shall, in accordance with the statutory provisions, not be affected thereby. This shall also apply to mandatory liability in accordance with the Product Liability Act.

## **11. Non-solicitation clause**

The Customer is prohibited from

- soliciting our employees and artists, or attempting to solicit them,
- inducing them to breach their contract with us or
- engaging in informal agreements with them to induce them to provide services by way of moonlighting.

## **12. Copyright**

(1) All works created by us, in particular artwork, digital media and content productions, shall remain our intellectual property.

(2) The Customer is prohibited from publishing or exploiting the works created by us without our explicit consent. The Customer is, in particular, prohibited from photographing or filming the content created by us, or presenting it anywhere other than on the agreed public premises.

### **13. Contractual penalty**

- (1) A contractual penalty shall be due for each case of contravention of the actions specified in Clauses 11 and 12.
- (2) The amount of the contractual penalty shall be as follows:
  - a. In the case of painting works, € 1,000 per m<sup>2</sup> to be painted in accordance with the order confirmation, however at least € 5,000.
  - b. In all other cases, twice the order value in accordance with the order confirmation, however at least € 5,000.

### **14. Place of performance/Place of jurisdiction/Applicable law**

- (1) The place of fulfilment for any delivery obligations on our part and for any other contractual obligations on the part of either party shall be Buchholz/Nordheide.
- (2) This agreement and these terms and conditions of business, as well as the entire legal relationships between the Customer and us shall be subject to the laws of the Federal Republic of Germany, subject to exclusion of any references to other legal systems and international agreements. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.
- (3) The District Court of Stade, which has jurisdiction for our place of business, shall be competent for any disputes arising from this contractual relationship. We shall, however, also be entitled to sue the Customer at its place of business.