

General Terms and Conditions

1.1 Conclusion of a contract and involvement

The following terms and conditions apply to all deliveries and services to be provided by us, unless otherwise agreed between you (the Client) and us. Any terms of the Client deviating from our General Terms and Conditions shall not apply.

All contractual agreements shall be made in writing. If you have agreed terms with any member of our staff, who is not authorised to represent our company, and where these terms deviate from our General Terms and Conditions, such agreements shall only become part of the contract upon our written approval. In case of uncertainty as to the contents of the contract, our written confirmation of the contract shall be decisive. The confirmation shall be deemed binding on the expiry of ten days without objection.

1.2 Delivery

Obstacles to performance, such as force majeure, riot, strike, lockout that occur through no fault of our own or of our agents or of our suppliers, shall have the effect as to delay the due date of delivery for the duration of such impairment, where no contractual right of revocation exists.

1.3 Passing of risk

Delivery is made ex warehouse. In case of shipment, risk passes to you upon dispatch of the goods.

1.4 Prices

The prices currently applicable are defined in agreements made with you.

Price increases that are based on fluctuations in price determining factors (e.g. unknown or not yet effective cost increases resulting from any duties or charges levied etc.) are reserved. Such price amendments, which shall be demonstrated on request, shall be restricted to deliveries and services that are due not before a period of 4 months subsequent to the conclusion of contract.

The prices apply ex warehouse and are exclusive of extra costs (packaging, freight, postage, insurance etc.).

1.5 Terms of payment

Our invoices are due for payment without deduction 14 days following the invoice date, unless otherwise agreed. We may also invoice in full for deliveries or services which have as of date of invoice been made, respectively rendered, in part. Small deliveries up to a value of EUR 75.00 may be settled immediately by payment upon delivery.

Your payments shall be set off against the oldest outstanding claim.

Our claims may only be set off against yours, where claim in question is undisputed and we have accepted it. You are not entitled to assign claims without our prior approval. If you are a merchant, you shall have no right of retention, the right under § 369 HGB¹ is hereby expressly excluded. If you are not a merchant, you shall have a right of retention provided that such right is based on the same contractual relationship.

Upon default of payment - with respect to merchants upon due date of payment - interest shall be charged on the invoice total at an annual rate of ten percentage points above the applicable base rate. We reserve the right to prove and assert any such further damage arising through default. Equally, you may demand a reduction in interest charged where you can show that damage resulting to us through default has not occurred to this extent. The statutory rights of rescission of contract and to assert damages in place of performance remain unaffected.

If our claims to payment are put at risk, in particular, on deterioration of payment relations, on discontinuance of payment or if an application for insolvency proceedings has been lodged against your assets, we are only obliged to perform concurrently or on the provision of security.

1.6 Liability for defects

Notification in writing of any defects apparent on proper examination shall be made within one week following the delivery of goods or receipt of services. Notice of other defects shall be made in writing within the aforementioned term after its discovery.

In case of a justified and timely notification of defect, the defect shall be eliminated, at our option, by means of supplementary performance or by delivery of an article free from defects. We shall be

¹ Commercial Code

entitled to refuse supplementary performance in accordance with statutory provisions.

You are entitled to rescind the contract or to reduce remuneration in accordance with the provisions of the following paragraph in all cases, where we refuse to provide supplementary performance, if such subsequent performance fails, or if supplementary performance is unreasonable for you.

The right to rescind the contract - provided such rescission is not excluded by law- or to reduce remuneration shall arise only where a reasonable period has been set by you for supplementary performance and such has expired to no avail. This duty to fix such a period for supplementary performance shall not exist where such is deemed unnecessary by law. In case of rescission of contract, you shall be liable for any deterioration, loss or benefits not derived, not only as would have been avoided in the case of your own usual diligence but for every fault.

With respect to commercial trade, the limitation period for claims as a result of defects is one year.

1.7 Liability

Subject to other contractual or statutory conditions for liability, we shall be liable for damages - and for the reimbursement of expenses – as arise in connection with the delivery of defective goods or other defective service or with the commission of any tortious act, only if the case of malice, gross negligence or in the case of negligence simpliciter in connection with the breach of a material contractual obligation (a contractual obligation going to the root of contract). Liability shall, however, be limited - except in case of malice – to damage foreseeable at the time of conclusion of contract.

Except in the case of breach of material duties – and except in the case of damage caused through delay - liability for negligence simpliciter is excluded.

With respect to damage caused by delay, liability shall be accepted for negligence simpliciter, though the this shall be capped at 5% of the purchase price agreed with us, alternatively at 5% of the level of remuneration for other services. Liability for products in accordance with the Product Liability Act (Produkthaftungsgesetz) remains unaffected. The same shall apply to liability for damages with respect to injury to life, body or health.

1.8 Reservation of title

In case you are a merchant, we shall retain ownership of the goods delivered until all claims arising through our business relationship have been satisfied in full. If you are not a merchant, we shall retain ownership of the goods delivered until the purchase price has been paid in full.

You shall inform us immediately in the case that any goods subject to such a proprietary lien in our favour are pledged or otherwise made subject to legal enforcement procedures by a third party. All costs arising in connection with any necessary intervention by us shall be borne by you.

Subject to our revocation in the case that you should fall in default of payment, you may dispose of those goods subject our proprietary lien as required. You shall not, however, pledge the goods or otherwise transfer ownership in the goods by way of security.

You hereby assign all entitlements resulting to you from the reselling, processing, installing or any other such use of the goods delivered by us for the purpose of securing all claims arising through our business relationship. Should the economic value of the assigned entitlements exceed our claims by more than 20%, we shall be bound at your request to re-assign, respectively to give up, the securities existing in excess of this amount.

If you are a merchant and you are in default to an amount exceeding 10% of any due claim for more than eight days, we shall be entitled (on account of our proprietary lien in the goods) to collect the goods delivered to you until payment has been paid in full. If the goods have become a material part of property belonging to you, you shall be required to allow separation of the goods and to reconvey ownership in these goods to us. All costs and any reduction in value of the dismantled property shall be borne by you. The recollection of the goods by shall represent the rescission of contract only in the case that the law so deems.

1.9 Place of Jurisdiction

The city of Essen shall be the agreed place of jurisdiction for any and all disputes arising with respect to deliveries and services – as well as for disputes arising with respect to bills of exchange and cheques – as between us and merchants, legal persons under public law or public special funds.