

GENERAL SALES, DELIVERY AND INSTALLATION TERMS OF HOPFGARTNER KUNSTSTOFF- UND UMWELTECHNIK GMBH FOR COMPANIES

1. General – Scope

1.1. Deliveries, services and offers are exclusively based on these terms of sale and delivery, which are also applicable to purchasing and work contracts and for future contracts. We do not acknowledge general business conditions of the buyer which contradict or deviate from our conditions of sale unless we have expressly agreed to their validity in writing. Our conditions of sale shall also apply if we, with knowledge of the buyer's conditions which are inconsistent with or deviate from our conditions of sale, unreservedly carry out delivery to the buyer.

1.2. All agreements made between us and the buyer for the purpose of performance of this contract are set out in writing in this contract.

1.3. These conditions of sale shall only apply to companies in the sense of § 310 Section 1 BGB (German Civil Code)

2. Offer documents

We reserve the property right and copyright to all representations, drawings, calculations and other documentation. The buyer requires our express prior consent before these may be forwarded to third parties.

3. Pricing and payment terms

3.1. The prices are based on the applicable individual offer or order confirmation. We reserve the right to change our prices in an appropriate manner if increases or decreases in costs take effect following the signing of the agreement, in particular on the basis of collective wage agreements or increases in the price of commodities. We shall demonstrate these to the buyer on request. Provided that nothing else is stated in the order confirmation, our prices are "ex works". Packaging, shipping costs, transport and assembly insurance, installation and training are invoiced separately.

3.2. Customs duties and statutory value added tax will be calculated separately.

3.3. Deduction of discount requires a separate written agreement.

3.4. Unless otherwise stated in the order confirmation, the purchase price or compensation for work performed (without deduction) will be due for payment within 30 days after date of invoice.

3.5. In case of delayed or deferred payment, interest of 8% above the base rate must be paid for default or deferral of payment, unless we prove a levy with a higher interest rate. Otherwise, the statutory rules concerning the consequences of default of payment shall apply.

3.6. The customer is only entitled to set-off when his counter-claims have been legally established, are undisputed, or have been recognised by us. In addition, he shall be authorised to exercise a right of retention only to the extent that his counter-claim is based on the same contractual relationship.

4. Delivery dates

4.1. The delivery dates are based on our order confirmation and are only agreed on an approximate basis. Fixed dates require an express and separate agreement.

4.2. The period of delivery determined by us shall only commence after all technical questions have been resolved. The fulfilment of our delivery conditions is subject to the prompt and orderly fulfilment of the obligations on the ordering party and persons commissioned by him, such as change requests, delayed material delivery, etc. The right to raise objection to non fulfilment of the agreement is reserved. The agreed dates shift by the extent of the said delays stemming from the buyer. In such cases, there is no entitlement to preferential processing. The same provisions apply if official or other necessary permits or information from the client, which is subsequently required by third parties for the execution of deliveries, are not received in time. Partial and subsequent deliveries of documentation is permitted.

4.3. If the buyer fails to accept the goods or if he culpably infringes any other duty to collaborate, we shall be entitled to ask for the compensation of any resulting damage including any possible extra expenses. Any further legal claims remain unaffected.

4.4. Insofar as the preconditions of Section (3) exist, the risk of an accidental loss or the accidental deterioration of the object of the purchase shall pass to the buyer at the moment that he is in default of acceptance or payment.

4.5. We are liable under the statutory provisions if the underlying contract of sale was a fixed transaction for the purposes of § 286(2) No. 4 German Civil Code (BGB), or § 376 German Commercial Code (HGB). We shall be liable subject to the legal regulations when, as a consequence of a delay in delivery caused by us, the buyer lodges a claim that his interest in a further contract fulfilment has fallen into discontinuance.

4.6. We shall further be liable according to the legal regulations in so far as delivery default is based on an intentional or grossly-negligent breach of contract attributable to us. Provided the delay is not due to our intentional default of the contract, our liability for indemnity shall be limited to the predictable, typically occurring damage.

4.7. We shall also be liable in accordance with the statutory provisions insofar as the delay in delivery that was due to us was caused by the culpable breach of a material contractual obligation; in this case however our liability for damages shall be limited to the foreseeable typically occurring damage.

4.8. Moreover, in the event of a delay in delivery, we shall be liable for every full week of delay within the context of a flat-rate compensation for delay amounting to 0.5% of the delivery value, to a maximum of 5% of the delivery, unless we can prove that the damage was lower.

5. Plans and documents

5.1. The information about weight, size, capacity, price, performance and similar which is listed in the catalogues, brochures, images and price lists are only approximate, unless otherwise expressly described as binding. We retain the ownership and copyright of cost estimates, drawings and other documents. These must not be accessible to third parties.

5.2. We are under no obligation to examine the design and planning data of the client or which has been delivered to a third party.

6. Risk transfer / packing costs / insurance

6.1. Irrespective of the agreement, and unless the order confirmation states otherwise, means of transport is to be provided, the agreed delivery terms are "ex works", and risk is transferred to the client at the time of dispatch from the factor or place of storage. The above also applies when we deliver carriage prepaid. If the delay of shipment is on part of the client, the risk is transferred at the time of readiness for shipping.

6.2. In accordance with the German Packaging Regulation, transport packaging and all other packaging cannot be returned, with the exception of pallets. The buyer is obliged to dispose of the packaging on his own account.

6.3. Unless otherwise agreed in writing, we shall only accept liability for transport damage if the client shows this to the carrier after identifying the damage and has the situation recorded. The client shall be entitled to compensation if he presents the statement of facts, bill of lading or express goods card and title transfer with signature of the client.

6.4. The contractor shall be entitled to conclude at the client's cost an assembly insurance contract or transport damage insurance for all shipments.

7. Liability for defects

7.1. Claims concerning defects on the part of the buyer presuppose that the latter has properly met his obligations according to § 377 HGB in respect of inspection and making complaints.

7.2. To the extent that the purchased items are defective, the buyer can, according to § 439 Section 3 BGB, require subsequent performance in the form of removal of the defect or in the form of delivery of a new defect-free product. In the event of the removal of the defect, we shall be obliged to bear all the costs which are required

for the purpose of removing the defect, in particular transport costs, travelling expenses, labour and material costs provided that the said costs are not increased by the fact that the purchase item was carried to a place other than the place of performance.

7.3. If subsequent fulfilment fails, the buyer shall be entitled, at his discretion, to rescind the contract or demand a reduction of the purchase price.

7.4. Liability for defects is excluded to the extent that the defect is the result of special instructions of the buyer in terms of design and material. We must point out noticeable risks. There shall be no claims for defects where the impairment of use is insignificant, where there is normal wear and tear or where damages arise after the passing of risk as a consequence of incorrect or careless handling, excessive operational demands, unsuitable equipment or as a consequence of special exterior influences which were not assumed in the agreement. Likewise, if repair work or modifications are carried out improperly by the purchaser or a third party, claims for defects cannot be asserted for these or the resulting consequences.

7.5. We accept liability in accordance with the legal requirements of the governing law, insofar as the buyer claims damage compensation based on intent, gross negligence or malice, including that of our representatives or agents. This does not include the gross negligence of vicarious agents beyond essential contractual obligations. Insofar as we cannot be held responsible for the intentional violation of the agreement, our liability for losses or damage shall be limited to the foreseeable, typically incurred damage.

7.6. We also accept liability in accordance with the legal provisions provided that we infringe on an essential contractual obligation through negligence; however, also in this case the liability for damages is limited to the foreseeable, typically occurring damage.

7.7. Liability owing to culpable injury to life, the body or health remains unaffected; this also applies to mandatory liability according to the Product Liability Act.

7.8. Any other form of liability not specified above is excluded.

7.9. The period of limitation is 12 months, beginning with the transfer of risk or completion of the installation. The limitation period in case of delivery recourse pursuant to §§ 478, 479 BGB remains unaffected; it is five years from the delivery of defective goods.

7.10 If the buyer is an intermediary seller of the goods delivered to him and the final purchaser of the goods is a consumer, the limitation period for any action of recourse from the buyer against us is the period specified by statute.

8. Total liability

8.1. Liability for compensation that goes beyond that foreseen in § 7 is excluded, irrespective of the legal nature of the claim being pursued. This applies particularly to damage claims for liabilities resulting from contract closure, due to other non-fulfilment of commitments or legal claims for property damage according to § 823 BGB.

8.2. As far as the liability for compensation against us is excluded or restricted, this shall be valid as well with respect to the personal liability for compensations of our directors, employees, staff members, representatives and agents.

9. Retention of title

9.1. We reserve the ownership of the item purchased until all payments resulting from the business relation with the buyer have been received. The itemisation of individual claims in a current invoice as well as statements of balances and their acknowledgement shall not affect the reservation of title. This also applies when the purchase price has been paid for certain goods specified by the buyer.

9.2. The buyer is obliged to handle the merchandise purchased with care. He is particularly obliged to insure that merchandise at his own expense against any damages arising from fire, water and theft according to the replacement value. Should maintenance and inspection work be necessary, the buyer must perform such work in good time and at his own expense.

9.3. The buyer is entitled to resell the goods that are subject to retention of title within the ordinary course of business. Pledging is not permitted. In the event of a pledge by third parties, we are to be informed thereof without delay. The buyer shall assign to us any claims and ancillary rights arising from the resale of the reserved goods until full settlement of all claims of the contractor. We accept this assignment.

9.4. Irrespective of the assignment and our right to collection, the buyer is entitled to collect claims as long as he meets his obligations towards us and does not suffer deterioration of assets. At our request, the buyer shall notify the debtors of the assignment and to provide us with the necessary information and documents to collect the claim.

9.5. If the buyer fails to meet his payment obligations, we can demand at any time the return of the goods, or the collection thereof, whereby the buyer shall allow us to enter his premises, and also use of the product, taking into account the proceeds to the purchase price. Any seizure and sale by us of the delivered goods in order to secure the purchase price claim shall not be deemed as withdrawal from the contract, unless we explicitly state this in writing.

9.10 Any further processing or machining of the reserved goods is effected for us by the buyer without any obligations for us resulting therefrom. In the event of any processing, connecting, commingling or mixing with other goods which do not belong to us, we are entitled to the co-ownership share of the new product in the ratio of the value of the reserved goods to the rest of the processed goods at the time of the processing, connecting, commingling or mixing. If the buyer acquires sole ownership of the new product, the parties to the contract are in agreement that the buyer grants us co-ownership of the new product in the ratio of the value of the processed and/or connected, commingled or mixed reserved goods and stores these for us without charge.

9.11 If the reserved goods are resold together with other goods, then the agreed advance assignment shall only apply up to the invoice value of the reserved goods which are resold together with the other goods.

9.12 We undertake, upon the buyer's request, to release the securities to which we are entitled pursuant to the above provisions at our discretion and to the extent that their realisable value exceeds the claim secured by 10% or more. The retention of title is effective even if the items are securely connected and anchored to the foundation of a building.

9.13 If both a check and a bill of exchange are presented to us by the buyer and accepted to pay for the retained goods, the retention of title shall continue to apply until the end of the exchange period.

10. Withdrawal from contract in the event of insolvency

If insolvency proceedings are opened against the assets of the buyer, an application is made for insolvency proceedings or insolvency proceedings are rejected for lack of funds, we shall be entitled to withdraw from the contract.

11. Jurisdiction and place of performance

11.1. If the customer is a merchant, a legal entity of public law or a special fund under public law, Aichach shall be the agreed place of jurisdiction. We are, however, also authorised to take legal action against the buyer in the court of his residence. The laws of the Federal Republic of Germany shall apply with the exception of the UN Law on International Sales (CISG) and the rules of referral under German International Private Law even if the buyer's registered office is located abroad.

11.2. Provided that nothing else is stated in the order confirmation, our company headquarters are the place of performance.

11.3. Should individual clauses of this agreement be or become invalid or contain a loophole, this will not affect the remaining provisions. The parties undertake to replace the invalid provision with a legal permissible provision which approximates the economic purpose of the invalid provision and closes this loophole.

Ingolstadt, 01.01.2014