
General conditions of sale of Gebr. Liebisch GmbH & Co. KG, Bielefeld

1. General

- (1) Our delivery of goods and services is governed exclusively by the terms and conditions set out below. Such terms and conditions, even if not expressly referred to in an individual case, shall also govern any and all future transactions of the above- mentioned kind.
- (2) Conflicting terms and conditions of purchase or other terms and conditions of business of the other party – hereinafter referred to as Buyer – are hereby expressly opposed. Such other terms and conditions are not binding upon us even if we fail to explicitly reject such terms and conditions upon entering into a contract.

2. Offers and Purchase Orders

- (1) All our proposals are subject to change without notice, including without limitation with regard to prices and availability.
- (2) Illustrations are not binding with regard to items delivered. We reserve the right to effect reasonable engineering changes.
- (3) Purchase orders are not binding on us unless we have acknowledged the purchase order or performed the purchase order by shipping the goods.
- (4) Purchase orders for electrical equipment shall be made specifying the current type and voltage.

3. Delivery Period/Delivery

- (1) Any delivery dates and delivery periods specified are approximate only. Unless agreed otherwise in a specific case, the delivery period begins upon dispatch of our order confirmation; however, under no circumstances before the documents, approvals and releases to be obtained by Buyer have been provided and not before any down payment that may have been agreed has been duly paid.
- (2) Firm deals are binding only if expressly agreed upon.

- (3) In the event of any delays in delivery caused by force majeure, riot, strike, lockout, raw material shortage, or business disruption for which we are not responsible and which affect us or our providers, the period of delivery is extended reasonably, however by not less than the period of time required to remedy the disruption to the extent that such disruption affects the production or delivery of the delivery item.

This also applies in the event that we, through no fault on our part, have not been supplied at all or have not been supplied properly by our own suppliers.

We shall notify the Buyer as soon as reasonably possible of the beginning and end of such events.

In the event of a permanent business disruption caused by force majeure, riot, strike, lockout, raw material shortage or other permanent business disruptions for which we are not responsible, both the Buyer and ourselves shall also be entitled to rescind the entire contract or parts thereof, excluding any claims for damages, if, as a result of such business disruptions, delivery of the delivery item is prevented or made unreasonable for us.

In the event of rescission, any advance performance shall be reimbursed as soon as reasonably possible. The party to the contract intending to rescind the contract in accordance with the provisions herein above shall do so giving two weeks' notice of termination. A permanent breakdown within the meaning of this paragraph is assumed to have occurred if the disruption continues for more than five weeks.

- (4) We reserve our own punctual and faultless receipt of supplies. We shall notify Buyer of such obstacles as soon as reasonably possible. We shall not be liable for delayed, omitted or non-conforming deliveries insofar as such delayed, omitted or non-conforming deliveries are attributable to our own suppliers without any fault on our part. Without prejudice to other provisions, this applies on condition fact that we have entered into a concrete covering transaction.
- (5) Buyer's claims for damages for delay in delivery are subject to the provisions in **Clause 9 (2) (Warranty Rights/Damages)**.
- (6) Deliveries are made ex works free on truck (Incoterm 2010) FCA Bielefeld or any other place of delivery as agreed from time to time).
- (7) Unless otherwise agreed in any individual case, Buyer shall bear the cost and risk of delivery by truck. Buyer shall bear the transport risk in any case even if we deliver goods free house by way of an exception.

- (8) Transport insurance will be taken out only if requested by Buyer and only at Buyer's cost.
- (9) We are entitled to dispatch reasonable part shipments. Part shipments are invoiced on the basis of the value of each part shipment and shall be paid by Buyer in accordance with the provisions of **Clause 5 (Payment)** herein below.

4. Prices

- (1) Unless otherwise agreed, prices do not include any taxes such as, without limitation, VAT and/or customs duties. Such taxes and duties are charged at the rates applicable at the time of invoicing.
- (2) All prices are ex works Bielefeld (or any other place as agreed from time to time; in case of direct shipment from our supplier's, prices are ex storage supplier's storage location), unpacked free on truck [Incoterms 2010: FCA Bielefeld or any other place as agreed from time to time]. Upon request, Buyer shall pay in advance or reimburse freight expenses without discount. Packaging is charged at cost.
- (3) Buyer will be credited for 30% of the value charged for empty wooden cases if such cases are returned free within one month. Mail boxes, cartons and crates are not taken back.
- (4) Except as otherwise agreed, the price payable and due shall be the price specified in the order acknowledgement or – if no order acknowledgement is issued – the price applicable at the time of delivery in accordance with our price list.
- (5) If a delivery period of more than four months has been agreed and our costs rise in the meantime due to higher prices for material, manufacture, assembly, staff, delivery and similar items, we shall be entitled to charge Buyer in accordance with such increase of costs.

5. Payment

- (1) Our invoices are due and payable immediately. Cash discounts and bonus agreements apply only to the order actually confirmed and do not justify deferral of payment. Any discount agreed is forfeited in the event of acceptance of a bill of exchange even if Buyer bears the discount charges.
- (2) Bills of exchange are accepted only if specifically agreed, and are accepted subject to discountability and by way of payment. All costs including the discount are borne by Buyer.

- (3) In the event of default in payment Buyer shall be liable to payment of interest on arrears to the amount of 12% p.a., however not less than the legal rate of interest on arrears in accordance with section 288 of the German Civil Code (BGB). Where the interest rate applicable in accordance with the foregoing sentence exceeds the legal rate of interest due under the provisions of section 288 of the BGB, Buyer shall be free to prove that no damage or less damage than alleged has been caused by such default. We reserve the right to assert claims for higher damages caused by default of payment.
- (4) If the Buyer – for whatever legal reason – defaults on payment, including payment by bill of exchange or by cheque, or if Buyer suspends its payments, all receivables due from Buyer shall become due and payable immediately, even if later due dates were agreed.
- (5) If Buyer suffers a major deterioration in its financial circumstances which jeopardises our claims from the relevant legal relationship, we shall be entitled to request cash in advance or adequate security. This also applies if we learn only later of such circumstances that were already in existence before the time of the conclusion of the contract. In the cases specified above, payment or provision of security cannot be made contingent on the return of current bills of exchange. If, notwithstanding notification of default and reasonable extension of time, the advance payment or security are not provided within the grace period granted, we are entitled to rescind the contract and to claim damages, including without limitation damages instead of performance, unless imperative legal provisions exclude the assertion of the right of rescission.
- (6) Buyer is not entitled to offset claims against any counterclaims or to assert a right of retention unless such offsetting or such counterclaims are based on the same
- (7) contract or on section 320 of the BGB or unless said claims are undisputed or have been finally decided by a competent court of law.
- (8) Our employees are not entitled to collect monies on our behalf without a special written power of attorney.

8. Retention of Title

- (1) We reserve the right of ownership to all goods delivered by us ("Reserved Goods") until full payment of the purchase price.
- (2) In the event that the delivery item has not been fully paid prior to delivery (cash in advance), we reserve the right of ownership to all goods delivered by us until all our claims resulting from the business relationship – including from contracts signed subsequently and for any legal reasons whatsoever – and all contingent liabilities (including without limitation payment by cheque or bill of exchange) have been paid.
- (3) Buyer is entitled to process and resell Reserved Goods in the ordinary course of business.

In the event that the delivery item has not been fully paid prior to delivery (cash in advance), the preceding sentence applies only provided that Buyer is not in default regarding any obligations it may have towards us or that Buyer does not suspend its payments. In that case, the following may apply on an individual case basis:

- a. Any processing or transformation of the Reserved Goods shall be carried out for us as manufacturer within the meaning of section 950 of the BGB, but without obligation for us. Processing or transformation of the Reserved Goods shall not give Buyer ownership of the newly created item(s).

If the Reserved Goods are processed, mixed, commingled, or combined with other items, we acquire co-ownership in the resulting new item(s) based on the relation between the invoice value of our Reserved Goods and the total value of the new item.

The provisions applicable to the Reserved Goods apply equally to any co-owner's shares created under the foregoing provisions.

- b. Buyer herewith assigns to us all claims from the resale or other disposal transactions, including without limitation from contracts for works, labour and material, together with all ancillary rights and covering also our co-owner's shares to the extent that the Reserved Goods have been processed, commingled or combined resulting in our co-ownership of such goods to the amount of our invoice value or to the extent that the goods have been permanently installed.

To the extent that the Reserved Goods have been processed, commingled, combined, or permanently installed, the assignment shall entitle us to collect a primary fraction of the claim resulting from the resale corresponding to the relation between the invoice value of the Reserved Goods and the invoice value of the product.

If Buyer sells the Reserved Goods together with other goods supplied by a party other than ourselves, Buyer hereby assigns to us a primary share in the claim resulting from the resale equal to the invoice value of the Reserved Goods.

If Buyer sells the claim within the scope of a factoring transaction, Buyer hereby assigns to us the substitute claim against the factor.

In the event that Buyer subjects the claim resulting from the resale to a mutual accounts relationship with Buyer's customer, Buyer hereby assigns to us its claims from the mutual accounts relationship to the amount of the invoice value of the Reserved Goods.

The assignment encompasses not only payment claims but also claims for surrender, including without limitation in the event that Buyer also resells subject to reservation of ownership.

- c. We hereby accept the above assignments.
- d. Buyer is entitled to resale only if the accounts receivable resulting from such resale are actually assigned to us and if Buyer reserves its legal ownership until Buyer's accounts receivable from such resale have been paid in full.
- e. Buyer shall have authority to collect the accounts receivable assigned to us until such authority is revoked. The authority to collect claims shall cease when revoked; revocation shall be effected if Buyer gets into arrears or suspends payment. The same applies if Buyer suffers a major deterioration in its financial circumstances, thus putting at risk our claims. In such cases we shall be deemed to have Buyer's permission to notify customers of the assignment and to collect the accounts receivable ourselves.
- f. Buyer shall submit to us upon request a detailed list of the claims due to Buyer including the names and addresses of customers, the amount of each of such claims, the invoice date etc. and shall provide us with all information and documents required for the assertion of the accounts receivable assigned to us and shall permit us to verify the information provided.

- g. Any sums of money received by Buyer on the basis of accounts receivable assigned to us shall be separately deposited to our credit until remitted.
- (4) Pledging of the Reserved Goods or the accounts receivable assigned or any transfer thereof by way of security is not permitted. Buyer shall notify us immediately of any order of attachment, specifying the name of the attaching creditor.
- (5) If the value of the security due to us exceeds the total of our receivables from Buyer by more than 10% we shall release the exceeding amount at Buyer's request.
- (6) In the event of Buyer's default in payment or suspension of payments we are entitled to take back the Reserved Goods subject to any other legal requirements that may apply. We are entitled to use at our discretion any Reserved Goods taken back for our satisfaction.
- (7) Buyer shall hold the Reserved Goods in safe custody for us. The Buyer shall take out reasonable insurance against the usual risks such as fire, theft, and flooding with regard to the Reserved Goods. Buyer undertakes to assign to us its claims for any compensation due to Buyer from any insurance agency or other obligors for the damages mentioned above to the amount of our claims. We hereby accept the assignment.

9. Warranty Rights/Damages

- (1) Any subsequent performance for which we are responsible will be carried out either by rectifying the defect or by replacing the goods, as we deem fit. The location of subsequent performance is our registered office. Section 377 of the German Commercial Code (HGB) remains unaffected.

Replaced parts become our property. In the event that we have to rectify any defects, we shall bear all costs and expenses necessary for such rectification, including without limitation any costs of transport, travel, work, and materials; provided, however, that such costs are not increased by moving the purchased goods to a place other than the place originally agreed on.

Minor variances in quality, colour, width, weight, or design do not constitute defects.

In addition, Buyer shall have the right to cancel the contract and to reduce the purchase price, provided that the relevant legal requirements have been met. Claims for compensation are subject exclusively to the following provisions.

- (2) In the event of culpable breach of a material obligation (fundamental breach of contract) on our part, we shall be liable for damages if the relevant statutory requirements have been met; however, our liability for damages is limited to compensation up to the amount of the typical and foreseeable damage incurred, unless otherwise provided herein below. Material obligations are those obligations the fulfilment of which is of the essence for the contract and the observation of which the Buyer may rely on in the due course of business; and material obligations also include those obligations the violation of which would endanger the purpose of the contract.

Buyer is entitled to claim compensation in the statutory amount from us in accordance with the legal provisions if a damage has been caused by us or by one of our legal representatives or vicarious agents and are based on

- culpable injury to life, limb or health, **or**
- intentional or grossly negligent breach of duty, **or**
- the Product Liability Act or other mandatory legal provisions constituting grounds for strict liability on our part, **or**
- violation of an obligation arising from a supply risk that we have assumed or a warranty that we have given

Any other compensation claims asserted against us, our legal representatives, or our vicarious and other agents are excluded, whatever their legal grounds may be.

The legal provisions regarding the burden of proof apply.

10. Statutory Limitation of Claims Based on Defects

- (1) Any claims asserted by Buyer for material defects shall expire by limitation within one year; provided, however:
- a. the product delivered by us is an item that has been integrated in a building structure in accordance with the customary use of that product and has caused the defectiveness of that building structure, **or**
 - b. the claims are claims governed by section 479 of the BGB, **or**

- c. the defect is due to fraudulent non-disclosure of a defect or intentional breach of duty on the part of ourselves or any of our legal representatives or vicarious agents.
- d. The cases listed in subparagraphs (a) to (c) and any claims for damages not excluded in accordance with Clause 9 (2) herein above are subject to the statutory periods of limitation. The same applies to compensation claims based on the fact that we have assumed a guarantee or a supply risk.

(2) In case of defects in title Clause 10 (1) hereof is applied mutatis mutandis.

11. Place of Performance, Place of Jurisdiction and Governing Law

- (1) The place of performance is at our registered seat.
- (2) If Buyer is a fully qualified merchant within the meaning of commercial law or a legal entity under public law or a special fund or if Buyer has no general place of jurisdiction within Germany, the competent courts of Bielefeld have jurisdiction. We reserve the right to take legal action against Buyer at Buyer's general place of jurisdiction.
- (3) The contractual relationship is governed by German law without effect to conflicts of laws principles and excluding the UN Convention on Contracts for the International Sale of Goods (CISG).

Revised: December 2015