

## General Terms and Conditions of Delivery and Payment

### 1. General

- 1.1 Our services are provided only at the terms and conditions set out below. Any purchaser's conditions are not binding on us even if they have not been expressly rejected.
- 1.2 We process and store the relevant data as necessary for the organization and execution of the business relationships. The data are not used for any other purpose.

### 2. Offer

- 2.1. Our offers are subject to confirmation. A purchase order shall not be deemed accepted until it has been confirmed in writing by us, with the text format according to § 126 b) BGB (German Civil Code) being sufficient to meet the 'in writing' requirement. The scope of delivery is governed by our written order confirmation. Any side agreements or changes are subject to our confirmation in writing.
- 2.2. We reserve all property rights and copyrights to figures, drawings, quotations and other documents as well as samples; they must neither be reproduced nor made available to any third party without our written consent.
- 2.3. We reserve the right to make changes in design.

### 3. Prices, payment, delivery

- 3.1. Our prices are understood ex works including loading at the works unless otherwise agreed specifically, however, packaging not included.
- 3.2. Our prices are understood net plus statutory V.A.T. at the rate valid on the date of invoicing.
- 3.3. Any deduction of a cash discount is subject to a separate written agreement.
- 3.4. The amount of the invoice is due and payable immediately.
- 3.5. The purchaser shall not be entitled to set off any claims or exert any right of retention against our claims unless purchaser's claims are undisputed or established as final and absolute.

### 4. Delivery period

- 4.1. The delivery period begins when the order confirmation is sent, however, not before all documents, licenses, authorizations, releases to be procured by the purchaser have been submitted to us. The delivery period shall be deemed to be complied with if we have notified readiness for shipment or the delivery item has left our works by the time the delivery period expires.
- 4.2. The delivery period shall be extended reasonably in case of industrial action, particularly strike or lock-out, and in the event of unforeseeable obstacles that are beyond our control to the extent that such obstacles have demonstrably affected completion or delivery of the item to be delivered. This shall also apply if such circumstances have occurred among our suppliers. We shall not be responsible for said obstacles, either, if they occur during an existing delay in delivery. We shall notify any such obstacles to the purchaser without delay where applicable.
- 4.3. Fulfillment of the purchaser's contractual duties is a prerequisite for compliance with delivery deadlines.
- 4.4. If shipment should be delayed on request of the purchaser, we shall charge the storage costs beginning one month after notification of readiness for shipment, for storage at our works 0,5 % of the invoice amount for each month. If we set a reasonable additional time-limit to the purchaser, we shall be entitled after its expiration to dispose of the delivery item in a different way and make the delivery to the purchaser with a reasonably extended time-limit. The contractual parties are free to prove or claim higher or lower storage costs, respectively.
- 4.5. If the purchaser should be in default with acceptance of the goods ordered, we shall be entitled to cancel the contract after setting an additional reasonable time-limit and claim damages amounting to 15 % of the order value. We are free to assert a higher loss. The purchaser is free to prove a lower loss.

## **5. Passage of risk**

- 5.1. The risk shall pass to the purchaser on shipment of the parts to be delivered or on handing them over to a forwarder at the latest; this shall also apply if partial deliveries are made or if we should have assumed other items or services such as, for example, shipping costs or delivery to destination and installation. We are ready to insure the delivery item on request and at the expense of the purchaser.
- 5.2. If shipment should be delayed for reasons attributable to the purchaser, the risk shall pass to the purchaser from readiness for shipment, however, we shall be obliged to take out those insurance policies demanded by the purchaser at the latter's request and expense.
- 5.3. Partial deliveries shall be admissible.

## **6. Retention of title**

The following securities are provided to us until full settlement of all claims (including balances) and any contingent liabilities to which we may be entitled against the purchaser now and in the future.

- 6.1. The delivery item shall remain our property until any and all liabilities of the purchaser from the business relationship are settled.
- 6.2. We give the purchaser permission – revocable at any time – to resell the goods delivered within the scope of ordinary business transactions unless the claim resulting from such resale should already have been assigned to any third party or cannot be assigned to us for any other reason; the right to resale is forfeited in case of suspension of payments by purchaser.
- 6.3. The purchaser hereby and now assigns to us the claim to which it is entitled from resale, lease or similar economic disposition by way of security, regardless of whether the goods subject to retention of title were disposed of without or after integration with other goods.
- 6.4. The purchaser is entitled to collect assigned claims until this is revoked by us, however, the amounts collected have to be paid over to us immediately insofar as our claim is due.
- 6.5. The authorization to collect shall cease without requiring our explicit revocation if the purchaser should fail to meet its obligations towards us or get into financial trouble, particularly suspension of payments, or become subject of composition or insolvency proceedings. The purchaser is obliged to give us the information about the assigned claims that are necessary for their collection, submit related documents and notify the debtor about the assignment on our request.
- 6.6. The purchaser must neither pledge the delivery item nor transfer it by way of security. In case of an order of attachment or other disposition by a third party, the purchaser must inform us without delay. The costs of any interventions are at the purchaser's charge.
- 6.7. Any processing of the delivery item and/or its integration with other objects is deemed performed for us as long as the retention of title exists, however, without any binding effect for us and without our ownership ceasing to exist.
- 6.8. In case of processing, integration or mixing of the goods subject to retention of title with other goods not owned by the purchaser we shall be entitled to the co-ownership share of the new object thereby created in proportion of the invoice value of the goods subject to retention of title in relation to the other goods processed as at the time of processing, integration or mixing.
- 6.9. If the purchaser should acquire sole ownership of the new object, it is agreed that the purchaser concedes us a co-ownership share in the new object in proportion with the invoice value of the goods subject to retention of title which were processed, integrated or mixed and stores it for us free of charge.
- 6.10. If the goods subject to retention of title are resold together with other goods, regardless of whether this is without or after processing, integration or mixing, the assignment in advance agreed above shall only apply in the amount of the invoice value of the goods subject to retention of title that are resold together with the other goods.
- 6.11. We commit to releasing the securities to which we are entitled from the purchaser insofar as their value should exceed the value of our claims thereby secured by 20 %.
- 6.12. We shall be entitled to request surrender of the goods subject to retention of title if the purchaser should not meet its payment obligations either after a calendared deadline or after fixing a time-limit. Such request to surrender shall be deemed cancellation of contract at the same time.

## **7. Material defects**

- 7.1. In case of a defect that is attributable to us, we shall be entitled to remedy it at our discretion by repair or replacement free of charge. Parts replaced become our property. If we should not be ready or unable to perform such rectification, particularly if this should be delayed beyond reasonable time-limits for reasons attributable to us, or if at least two rectification attempts should fail, the purchaser shall be entitled – without prejudice to any claims for damages pursuant to article 9 – to cancel the contract or claim reduction of payment.
- 7.2. If the purchaser is entitled to make claims for material defects at its discretion, it shall be obliged to state on our request and within reasonable time whether it will demand – subject to the appropriate requirements – remedial performance, cancel the contract, claim reduction of the purchase price and/or claim damages in place of performance.
- 7.3. The expenses incurred for the purpose of remedial performance, particularly costs of transport, travel, labor and materials shall be at our charge unless the expenses should be increased because the delivery item was relocated to a place other than the purchaser's domicile and this relocation does not comply with the intended use.
- 7.4. The purchaser is obliged to inspect our shipment immediately on arrival and notify any obvious defects to us in writing without delay.
- 7.5. Claims for material defects are subject to a statutory limitation of 12 months. This does not apply insofar as the law prescribes longer periods pursuant to German Civil Code § 438 para. 1 no. 2 BGB (buildings and objects for buildings), § 479 para. 1 BGB (right of recourse) and § 634 a para. 1 no. 2 BGB (constructional defects) and for contracts including the VOB/B German Construction Contract Procedures as a whole.
- 7.6. Claims for material defects cannot be made for any material defects that occurred for the following reasons: Unsuitable or inappropriate use, improper assembly and/or commissioning by the purchaser or any third party, wear and tear, improper or negligent treatment, inappropriate equipment, replacement materials, inadequate construction work, chemical, electrochemical or electrical effects insofar as they are not attributable to our fault as well as any insignificant non-conformity with the agreed qualities or insignificant deterioration of serviceability.
- 7.7. Any rights of recourse of the purchaser pursuant to § 478 BGB against us shall only be effective insofar as the purchaser has not made any agreements with the end customer exceeding the statutory liability for defects. Clause 7.3 shall apply accordingly.
- 7.8. With regard to our liability, article 9 shall apply in all other respects. Any further claims for material defects shall be excluded.

## **8. Assembly**

- 8.1. Assembly work is subject to separate compensation unless otherwise agreed. In this regard, article 3 shall also apply. If assembly or commissioning should be delayed without our fault, the purchaser shall bear all costs for waiting times and any necessary additional travels.
- 8.2. For defects of assembly and with respect to liability, articles 7 and 9 shall apply.

## **9. Liability**

- 9.1. With respect to any further claims, our liability in case of ordinary negligence is limited to the indemnification paid by our liability insurance. This shall also apply to any personal liability of our employees, collaborators, representatives and vicarious agents. We are prepared to allow inspection of our policy to the purchaser on request. This limitation of liability shall also apply to any damage that did not occur on the delivery item itself unless the delivery item should lack qualities that were expressly warranted by us and the very purpose of the warranty was to protect the purchaser against damage not occurring on the delivery item itself or if the defect was fraudulently concealed.
- 9.2. The purchaser shall not be entitled to any claims for damages or indemnification beyond this. This shall not apply to inalienable rights according to the product liability legislation, in case of intent or gross negligence, in case of loss of life, limb or health and in case of culpable violation of an essential contractual obligation. However, in case of culpable violation of an essential contractual obligation, our liability shall be limited to the foreseeable damage as typical for the contract unless – again – intent or gross negligence should be established or for loss of life, limb or health. The provisions of article 9 shall not involve any reversal of the burden of proof to the detriment of the purchaser.
- 9.3. Insofar as the purchaser should be entitled to claims for damages pursuant to this clause, they are subject to statutory limitation along with the expiration of the statutory period of limitation for claims for material defects pursuant to clause 7.5.

## **10. Place of performance and legal venue**

- 10.1. The place of performance for all obligations from the contractual relationship is our business domicile.
- 10.2. If the purchaser is a merchant/entrepreneur, a legal entity under public law or a special fund under public law, the legal venue for all disputes arising shall be the court having jurisdiction for our domicile in Riedlingen, Germany. However, we shall also be entitled to take action before the court having jurisdiction for the purchaser's domicile.
- 10.3. The mutual legal relationships shall be exclusively governed by the laws of the Federal Republic of Germany, excluding the application of the UN Convention on Contracts for the International Sale of Goods (CISG).

## **11. Binding nature of the contract**

- 11.1. The contract shall remain effective even if individual parts of its provisions or individual clauses of the terms and conditions of delivery and payment should be legally void. Any gap caused by a void provision shall be filled in good faith according to the intent of the contract.
- 11.2. The contractual language is German. If there should be any semantic discrepancy between the German text and a translation of the contract and the present terms and conditions of delivery and payment, the meaning of the German text shall prevail.

FORM+TEST Seidner & Co. GmbH  
Zwiefalter Str. 20 • D-88499 Riedlingen  
Postfach 1154 • D-88491 Riedlingen  
Tel.: +49 (0) 7371 9302-0  
Fax: +49 (0) 7371 9302-99  
[www.formtest.de](http://www.formtest.de)  
[info@formtest.de](mailto:info@formtest.de)

Date of issue: 08/2016