

## General Terms and Conditions of Sale and Delivery of Allstein GmbH

### § 1 General, Scope of Application

(1) These General Terms and Conditions of Sale and Delivery (GTCS) shall apply to all our business relations with our contractual partners (hereinafter also referred to as: "Buyer"). They shall apply in their respective version to Buyers who are not consumers as a framework agreement also for future contracts without our having to refer to them again in each individual case. If this is expressly stated in the individual case, the GTCS shall only apply if the Buyer is an entrepreneur (§ 14 BGB), a legal entity under public law or a special fund under public law.

(2) The GTCS apply in particular to contracts for the sale and/or delivery of movable goods (hereinafter also referred to as "goods"), regardless of whether we manufacture the goods ourselves or purchase them from suppliers (§§ 433, 651 BGB).

(3) Our GTCS shall apply exclusively. Deviating, conflicting or supplementary General Terms and Conditions of the Buyer shall only become part of the contract if and to the extent that we expressly agree to their application. This requirement of consent shall apply in any case, for example even if we carry out the delivery to the Buyer without reservation in the knowledge of the Buyer's GTC.

(4) Individual agreements expressly made with the Buyer in individual cases (including collateral agreements, supplements and amendments) shall take precedence over these GTCS. Such agreements must be made in writing or expressly confirmed by us in writing.

(5) Legally relevant declarations and notifications to be made to us by the Buyer after conclusion of the contract (e.g. setting of deadlines, notifications of defects, declaration of withdrawal or reduction) must be made in writing to be effective.

(6) References to the applicability of statutory provisions shall only have clarifying significance. Even without such clarification, the statutory provisions shall therefore apply unless they are directly amended or expressly excluded in these GTCS.

### § 2 Offer and Conclusion of Contract

(1) Our offers shall be subject to change and non-binding. They are based on the Buyer's specifications and are subject to actual and technical feasibility.

(2) We reserve the property rights and copyrights to illustrations, drawings, calculations and other documents. Documents designated as confidential require our express written consent before being passed on to third parties.

(3) If we deliver goods according to drawings, models, samples or other documents provided by the contracting party, the contracting party shall warrant that the property rights of third parties are not impaired. Insofar as third parties prohibit us from manufacturing or supplying such goods, in particular by invoking industrial property rights, we shall be entitled, without further examination, to cease any further activity in this respect and to claim damages from the customer if the conditions otherwise exist. The contractual partner shall indemnify us against all third party claims in connection therewith.

(4) Technical information, for example in words, figures or illustrations, concerning performance data in our brochures, drawings or other publications are approximate values unless they are expressly designated as binding.

(5) The provisions of subsection 4 shall apply mutatis mutandis to information on delivery dates or production periods. These are non-binding guideline values which do not justify any claims on the part of the Purchaser unless they are expressly promised by us as binding.

(6) We reserve the right to make technical and optical changes to the products listed in our offer within the bounds of what is reasonable, as well as to adapt our products to any changes in standards.

(7) Any products and services listed on the Internet do not constitute a binding offer to us; rather, they are an invitation to submit a binding offer to us.

(8) By ordering goods, the customer makes a binding declaration that he wishes to purchase the goods ordered (offer of contract within the meaning of § 145 BGB). The contract shall only be concluded upon our confirmation of the respective order. The contractual relationship shall be governed exclusively by the content of our order confirmation and the content of the contract components referred to therein.

(9) With the order confirmation, the change of the ordered service as well as its cancellation are excluded.

(10) In electronic legal transactions, the confirmation of receipt of the order does not yet represent the binding declaration of acceptance of the contractual offer, unless acceptance is expressly declared in the confirmation of receipt.

### **§ 3 Delivery period and delay in delivery**

(1) The delivery period shall be agreed individually or stated by us upon acceptance of the order. Insofar as we specify a delivery date or delivery period in the order, this shall be a guideline (approximate specification) and not a binding contractual date. A binding delivery date requires an express written agreement (§ 126 BGB) with the contractual partner.

(2) If we are unable to meet binding delivery deadlines for reasons for which we are not responsible (non-availability of the service), we shall inform the contractual partner of this without delay and at the same time inform him of the expected new delivery deadline. If the service is also not available within the new delivery period, we shall be entitled to withdraw from the contract in whole or in part; any consideration already paid by the contractual partner shall be refunded.

(3) The occurrence of our delay in delivery shall be determined in accordance with the statutory provisions. In any case, however, a reminder by the contractual partner shall be required. The reminder must be in writing in accordance with § 126 BGB.

(4) The rights of the contractual partner pursuant to § 7 of these GTCS and our statutory rights in particular in the event of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or subsequent performance) shall remain unaffected.

### **§ 4 Delivery, Transfer of Risk, Acceptance, Default of Acceptance**

(1) Delivery shall be made ex warehouse, which is also the place of performance in relation to contractual partners who are not consumers. At the request and expense of the contractual partner, the goods shall be shipped to another destination (sale by delivery to a place other than the place of performance). Unless otherwise agreed, we shall be entitled to determine the type of shipment (in particular transport company, shipping route, packaging) ourselves.

(2) The risk of accidental loss and accidental deterioration of the goods shall pass to the Buyer upon handover at the latest. In the case of sale by delivery to a place other than the place of performance, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay shall pass to the Buyer upon delivery of the goods to the forwarding agent, the carrier or any other person or institution designated to carry out the shipment. If acceptance has been agreed, this shall be decisive for the transfer of risk. In all other respects, the statutory provisions of the law on contracts for work and services shall apply mutatis mutandis to an

agreed acceptance. The handover or acceptance shall be deemed equivalent if the contractual partner is in default of acceptance.

(3) If the Buyer is in default of acceptance, fails to cooperate or if our delivery is delayed for other reasons for which the Buyer is responsible, we shall be entitled to claim compensation for the resulting damage including additional expenses (e.g. storage costs).

(4) The customer shall acknowledge the delivery of the ordered goods and their handover or acceptance on the delivery bill or an acceptance report. The signed delivery bill or acceptance protocol shall be deemed proof of handover. If the customer is not present at the time of delivery, he shall name an authorized third party to receive and acknowledge the delivery. If no person is present for acknowledgement, we shall be entitled to note this on the delivery bill and to subsequently transmit the delivery bill with the bill by fax or by e-mail to the customer as proof. The goods shall then also be deemed to have been handed over if the customer does not object immediately upon receipt.

## **§ 5 Prices and terms of payment; set-off and right of retention**

(1) Unless otherwise agreed in individual cases, our prices current at the time of conclusion of the contract shall apply, ex warehouse, plus statutory value added tax.

(2) Any customs duties, fees, taxes and other public charges shall be borne by the Buyer. We do not take back transport packaging and all other packaging in accordance with the Packaging Ordinance; it becomes the property of the Buyer, with the exception of pallets and reusable racks as well as aids for securing loads.

(3) If there are more than six months between the conclusion of the contract and the agreed and/or actual delivery date, our prices valid at the time of delivery or provision shall apply. In the event of price increases by upstream suppliers, increases in wage and transport costs or other unexpected cost increases, we shall be entitled to demand negotiations on the revision of the price.

(4) The purchase price shall be due and payable within 10 days from the date of invoice for Buyers domiciled in Germany and within 21 days from the date of invoice for Buyers domiciled outside Germany. However, in the case of contracts with an order value of more than EUR 5,000.00, we shall be entitled to demand a down payment of 50% of the purchase price. The down payment shall be due and payable within 10 days from the date of invoice.

(5) Upon expiration of the aforementioned payment period, the Buyer shall be in default without reminder. During the period of default, interest shall be charged on the purchase price at the statutory default interest rate applicable at the time. We reserve the right to assert further damage caused by default. With respect to merchants, our claim to the commercial due date interest rate (§ 353 HGB) shall remain unaffected.

(6) The Buyer shall only be entitled to rights of set-off or retention to the extent that his claim has been legally established or is undisputed. Claims for warranty for defects arising from the contract itself shall remain unaffected.

(7) If, after conclusion of the contract, it becomes apparent that our claim to the agreed remuneration is jeopardized by the Buyer's lack of ability to pay (e.g. by an application for the opening of insolvency proceedings), we shall be entitled to refuse performance in accordance with the statutory provisions and - if necessary after setting a deadline - to withdraw from the contract (§ 321 BGB). In the case of contracts for the manufacture of unjustifiable items (custom-made products), we may declare withdrawal immediately; the statutory provisions on the dispensability of setting a deadline shall remain unaffected.

## **§ 6 Retention of title**

(1) We reserve title to delivered goods until full payment of all our present and future claims arising from the contract and an ongoing business relationship (secured claims).

(2) The goods subject to retention of title may neither be pledged to third parties nor assigned as security before full payment of the secured claims. The Buyer shall notify us immediately in writing if and to the extent that third parties seize the goods belonging to us.

(3) In the event of conduct by the Buyer in breach of contract, in particular in the event of non-payment of the due payment claim, we shall be entitled to withdraw from the contract in accordance with the statutory provisions or/and to demand surrender of the goods on the basis of the retention of title. The demand for return does not at the same time include the declaration of withdrawal; we are rather entitled to demand only the return of the goods and to reserve the right of withdrawal. If the customer does not pay the due payment claim, we may only assert these rights if we have previously set the customer a reasonable deadline for payment without success or if setting such a deadline is dispensable according to the statutory provisions.

(4) In relation to contractual partners who are not consumers (§ 13 BGB), the following shall continue to apply: The Buyer shall be entitled to resell and/or process the goods subject to retention of title in the ordinary course of business. In this case, the following provisions shall apply in addition:

(a) The retention of title shall extend to the products created by processing, mixing or combining our goods at their full value, whereby we shall be deemed to be the manufacturer. If, in the event of processing, mixing or combining with goods of third parties, their right of ownership remains, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods. Otherwise, the same shall apply to the resulting product as to the goods delivered under retention of title.

(b) The Buyer hereby assigns to us by way of security any claims against third parties arising from the resale of the goods or the product in total or in the amount of our co-ownership share, if any, in accordance with the preceding paragraph. We accept the assignment. The obligations of the Buyer stated in paragraph 2 shall also apply in respect of the assigned claims.

(c) The Buyer shall remain authorized to collect the claim in addition to us. We undertake not to collect the claim as long as the Buyer meets his payment obligations towards us, is not in default of payment, no application for the opening of insolvency proceedings has been filed and there is no other deficiency in his ability to pay. If this is the case, however, we may demand that the Buyer inform us of the assigned claims and their debtors, provide all information necessary for collection, hand over the relevant documents and inform the debtors (third parties) of the assignment.

(d) The Buyer shall inform us immediately of any seizure or other impairment by third parties.

(e) If the realizable value of the securities exceeds our claims by more than 10%, we shall release securities of our choice at the Buyer's request.

## **§ 7 Terms and conditions of assembly**

If the subject matter of the contract is installation services, the following conditions shall apply in addition:

(1) The contractual partner shall ensure that, in the event of a work assignment, the assembly site is made available to our personnel in a cleaned condition.

(2) Maintenance personnel and machine operators of the contractual partner must be available to support our personnel if required.

(3) To the extent necessary, the contractual partner shall provide additional labor (helpers), tools, equipment, lubricants, energy supply, water and comparable aids as well as the necessary devices and heavy tools free of charge.

(4) The contractual partner shall provide our personnel with suitable rooms for storing the equipment. Sufficient insurance coverage against fire and water damage is the responsibility of the contractual partner.

(5) The contractual partner shall ensure that the work assignment on site is not carried out under dangerous or unhealthy conditions and shall take all necessary measures to protect our personnel from any safety risks.

(6) The contractual partner shall inform our personnel in good time before the start of the performance about existing safety regulations at the place of work. The same shall apply to statutory, official or other regulations relating to the execution of the work and the operation as well as the prevention of illness and accidents.

(7) If the contractual partner does not comply with its obligations, we shall be entitled, after setting a deadline in advance, to have the actions incumbent on the contractual partner carried out at its expense.

## **§ 8 Claims for defects of the purchaser**

(1) The statutory provisions shall apply to the Buyer's rights in the event of material defects and defects of title, unless otherwise provided in the following. In all cases, the special statutory provisions shall remain unaffected in the case of final delivery of the goods to a consumer (supplier's recourse pursuant to §§ 478, 479 BGB).

(2) Insofar as the quality has not been agreed, it shall be assessed in accordance with the statutory provisions whether or not a defect exists (§ 434 para. 1 sentence 2 and 3 BGB).

(3) Claims for defects shall not exist in the case of problems resulting from natural wear and tear, from incorrect or negligent handling and care, from excessive stress, from the use of unsuitable care products, from improper storage and from insufficient observance of instructions for processing, use and maintenance. If improper modifications or repair work are carried out by the Purchaser or third parties, no claims for defects shall exist.

(4) The claims for defects of the Buyer, who is not a consumer, require that he has fulfilled his statutory obligations to examine the goods and to give notice of defects (§§ 377, 381 HGB). If a defect becomes apparent during the inspection or later, we must be notified thereof in writing without delay. The notification shall be deemed to be immediate if it is made within 5 working days at the latest, whereby the timely dispatch of the notification shall suffice to meet the deadline. The period begins with the delivery of the goods. Irrespective of this obligation to inspect the goods and give notice of defects, the Buyer shall notify us in writing of any obvious defects (including wrong delivery and short delivery) within two weeks of delivery, whereby timely dispatch of the notification shall also suffice to meet the deadline. If the Buyer fails to duly inspect and/or notify the defect, our liability for the non-notified defect shall be excluded.

(5) If the delivered item is defective, we may initially choose whether to provide subsequent performance by remedying the defect (subsequent improvement) or by delivering an item free of defects (replacement delivery). Our right to refuse subsequent performance under the statutory conditions shall remain unaffected.

(6) We shall be entitled to make the subsequent performance owed dependent on the Buyer paying the purchase price due. However, the Buyer shall be entitled to retain a part of the purchase price which is reasonable in relation to the defect.

(7) The Buyer shall give us the time and opportunity required for the subsequent performance owed. In the event of a replacement delivery, the Buyer shall return the defective item to us in accordance with the statutory provisions. The supplementary performance shall neither include

the removal of the defective item nor the re-installation if we were not originally obliged to install the item.

(8) We shall bear the expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labor and material costs, insofar as a defect actually exists. However, if a request by the Buyer to remedy a defect turns out to be unjustified, we shall be entitled to demand reimbursement from the Buyer for the costs incurred.

In relation to purchasers who are not consumers, we shall only have to bear the costs of installation and removal in the event of a defective delivery, in deviation from § 439 BGB (German Civil Code), if the purchaser proves to us a culpable breach of duty with regard to the causation of the defect. The reimbursement of removal and installation costs shall be limited in amount to the customary and reasonable costs normally incurred for proper and professional installation. In addition, we reserve the right in particular to deduct any benefit compensation in the event of added value or business-as-usual costs due to the renewed removal and installation.

(9) Only if the supplementary performance has failed or a reasonable deadline to be set by the Buyer for the supplementary performance has expired unsuccessfully or is dispensable according to the statutory provisions, the Buyer may withdraw from the purchase contract or reduce the purchase price. In the case of an insignificant defect, withdrawal shall be excluded.

(10) Claims of the Purchaser for damages or reimbursement of futile expenses shall only exist in accordance with § 8 and shall otherwise be excluded.

## **§ 9 Other liability**

(1) Unless otherwise stipulated in these provisions, we shall be liable for a breach of contractual and non-contractual obligations in accordance with the relevant statutory provisions.

(2) We shall be liable for damages - irrespective of the legal grounds - in the event of intent and gross negligence. In the case of simple negligence, we shall only be liable

(a) for damages resulting from injury to life, body or health,

(b) for damages resulting from the breach of an essential contractual obligation (obligation, the fulfilment of which enables the proper execution of the contract in the first place and on the compliance with which the contractual partner regularly relies and may rely); in this case, however, our liability shall be limited to the compensation of the foreseeable, typically occurring damage.

(3) The limitations of liability resulting from para. 2 shall not apply insofar as we have fraudulently concealed a defect or have assumed a guarantee for the quality of the goods. The same shall apply to claims of the Buyer under the Product Liability Act.

(4) The above exclusions and limitations of liability shall apply mutatis mutandis in favor of our corporate bodies, legal representatives, employees and other vicarious agents.

## **§ 10 Statute of Limitations**

(1) Notwithstanding § 438 para. 1 no. 3 BGB, the general limitation period for claims arising from material defects and defects of title shall be one year from delivery. If acceptance has been agreed, the limitation period shall commence upon acceptance.

(2) If, however, the goods are a building structure or an item which has been used for a building structure in accordance with its customary manner of use and has caused the defectiveness thereof (building material), the limitation period shall be 5 years from delivery in accordance with the statutory provision (Section 438 (1) No. 2 BGB). Also unaffected are special statutory provisions for claims in rem for surrender by third parties (§ 438 para. 1 no. 1 BGB), in the

event of fraudulent intent on the part of the Seller (§ 438 para. 3 BGB) and for claims in supplier recourse in the event of final delivery to a consumer (§ 479 BGB).

(3) The above limitation periods of the law on sales shall also apply to contractual and non-contractual claims for damages of the Buyer based on a defect of the goods, unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period in the individual case. The limitation periods of the Product Liability Act shall remain unaffected in any case. Otherwise, the statutory limitation periods shall apply exclusively to the Purchaser's claims for damages pursuant to § 9.

## **§ 11 Miscellaneous**

(1) The relations between us and the contracting party shall be governed exclusively by the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods of 11.04.1980 (CISG) shall not apply.

(2) If the Buyer is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive - including international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be our place of business. However, we shall also be entitled to bring an action at the Buyer's general place of jurisdiction.

(3) Insofar as the contract or these GCS contain loopholes, those legally effective provisions shall be deemed to have been agreed to fill these loopholes which the contracting parties would have agreed in accordance with the economic objectives of the contract and the purpose of these GCS if they had been aware of the loophole.

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