

TERMS AND CONDITIONS

for reseller by Rauschenberger Innovations GmbH

§ 1 Scope of these Terms & Conditions

1. Our deliveries, services and offers shall be given exclusively on the basis of these terms & conditions. Conflicting or differing conditions of the buyer are not accepted, unless we have expressly and in writing agreed on their application. These terms & conditions shall apply even if we perform the delivery without objection in the knowledge of conflicting or deviating terms & conditions of the buyer.
2. These terms & conditions shall also apply to all future contracts with the supplier even if they were not again expressly agreed upon.
3. These terms & conditions shall only apply for companies in the sense of § 310 para. 1 BGB (German Civil Code).

§ 2 Conclusion of the Contract

Supply contracts are concluded either by our written order confirmation following a written order or by performance of delivery. All verbal covenants or additional agreements, particularly per telephone, including but not limited to those about the carrying out of the order, shall require our separate written approval to be valid.

§ 3 Delivery, Refusal of Acceptance

1. The scope of delivery is determined by our written order confirmation.
2. In the event of refusal of acceptance of the delivery (including but not limited to COD shipments) the buyer shall bear all freight and postal charges as well as all other ancillary costs.

§ 4 Delivery Period

1. Unless anything to the contrary has been expressly agreed upon, the agreed upon delivery dates are generally no fixed dates (§ 323 para. 2 no. 2 BGB, § 376 HGB).
2. The delivery period commences not before all details are clear and both contractual partners have mutually agreed upon any and all conditions of the business. Requirements to meet the time limit for the delivery are: - any and all documents, which are to be delivered by buyer, are received by us in time;
- any and all approvals and releases to be provided by buyer, are received by us in time;
- the buyer has fulfilled a down payment obligation, if any.
3. Unless anything to the contrary has been expressly agreed upon, the delivery period shall be deemed to be complied with, if the operational delivery has left the plant within the agreed upon delivery period.
4. The delivery period shall be suitably extended, if the non-compliance with the delivery period is due to an event of force majeure. In the event that due to an event of force majeure we are not able to deliver within a suitable delivery period, both parties shall have the right to fully or partially withdraw from the contract. The same applies in the event of subsequent impossibility to fulfill the contract, for which we are not responsible. Compensation claims due to such withdrawal are excluded. In the event, that one of the parties intend to withdraw from the contract due to the aforementioned reasons, such party shall inform the other party without delay.
5. We are absolved of our performance obligation, if we are ourselves not supplied with correct goods ordered for the fulfillment of the contract. In the event that we are not delivered in time with the correct goods ordered for the fulfillment of the contract, the delivery period will be extended accordingly.

§ 5 Package and Shipment

1. The shipment of the goods (also returns, if any) shall be for the buyer's account and at his risk.
2. The choice of shipment method shall be in our discretion.
3. Packaging will be charged separately by us.

§ 6 Prices and Payment Terms

1. Prices are deemed without value added tax in the respective statutory amount.
2. Set-off of the receivables of the buyer against ours is only permissible if the receivable is acknowledged by us, not consented or has been legally established as final and absolute. The same applies for rights of retention; buyer shall only be entitled to exert a right of retention if his counterclaim arises from the same contractual relationship.
3. In the event that we receive subsequently indications of irregular payment transactions of the buyer, of the filing for or the opening of a moratorium or insolvency proceedings or of any other deterioration of his economic situation, we shall be entitled to carry out the delivery only against the payment of the purchase price in advance or against cash on delivery.

§ 7 Retention of Title

1. We retain title to the delivered goods for all receivables arising out of the current and prospective business relationship with the buyer (so-called current account retention "Kontokorrentvorbehalt").
2. The buyer shall be entitled to sell the goods subject to retention of title within the course of his regular business as long as he is not in default. Pledges or assignments as security are prohibited. The buyer hereby assigns to us as security any and all receivables in their entirety arising out of the resale of, or from any other legal ground (insurance, tortuous act) in connection with, the goods subject to retention of title (including, but not limited to all current account balance claims from current account). We hereby revocably authorize the buyer to collect the receivables assigned to us in his own name and on our account. The authorization to collect can only be revoked, if the buyer does not comply with his payment obligations.
3. In the event of any third party actions against our goods delivered under retention of title, particularly distresses, the buyer shall notify such third party of our property and inform us immediately so that we are able to enforce our property rights.
4. In the event of any breach of the contract by the buyer – particularly default in payment – we are entitled to withdraw from the contract and to reclaim the goods subject to retention of title.
5. The buyer shall not be entitled to resale the goods subject to retention of title, if he agrees on conditions of the third party, which do not allow him to assign receivables against the third party to us.
6. We undertake to release the securities to which we are entitled to upon the buyer's request insofar as the realizable value of our securities exceed the secured receivables by more than 20%.
7. We retain full title to and copyright on sketches, illustrations, drawings, plans and all further documents. They shall not be copied, duplicated or made available to third parties without our explicit prior written approval.

§ 8 Passing of Risk

1. Provided that nothing else is stated in the order confirmation, delivery „ex works“ is agreed upon.
2. Provided that nothing else is expressly agreed upon, the risk of accidental loss and accidental deterioration shall transfer to the buyer upon the handover of the goods to a freight carrier, but no later, however, than upon the goods leaving the delivery warehouse. This applies equally, if we have taken over the delivery.

§ 9 Warranty

1. Any claim based on defects requires that the buyer meets his obligations of examination and defect indication according to § 377 HGB (German Commercial Code), i.e. if it is expedient in normal business, has immediately inspected the goods on receipt and, if a defect was discovered, informed us immediately, or if the defect is discovered later, submitted or corrected the declaration immediately upon becoming aware of the defect.
2. The goods delivered have the quality as per product description, otherwise the quality customary in the business. Explanations on the quality of the goods do not represent a guarantee, if they are not expressly designated as such.
3. In the event of a claim on supplementary performance ("Nacherfüllung") (by rectifying the defect ("Nachbesserung") or by delivery of goods free from defects ("Nachlieferung")) the most cost-effective option shall be selected, provided that the buyer suffers no disadvantage thereby.
4. In the event of the identification of a defect, the buyer is obliged to provide us with the rejected goods for inspection.

5. We do not waive entitlement to the objection that the complaint was not timely or in an orderly manner, if we enter into negotiations with regard to possible defects.
6. The warranty period for material defects ("Sachmangel") shall be 2 years from the passing of the risk.

§ 10 Liability

1. We shall only be liable for damages or compensation for futile expenses in the sense of § 284 BGB (hereinafter "Compensation") due to defects in the delivery or service or due to the violation of any other contractual or extra-contractual obligation, particularly due to tortuous act, only in the event of wrongful intent or gross negligence. The aforementioned limitation of liability does not apply to injury to life, body or health, in the event or the taking over of a guarantee or a procurement risk, the violation of material contractual obligations (cardinal duties) or for the liability under products liability legislation ("Produkthaftungsgesetz").
2. Compensation on grounds of violation of material contractual obligations (cardinal duties) shall be limited to damages for such loss or injury as must have been foreseeable under the circumstances at the time of execution of the contract (loss or injury typical for the type of contract), provided that there was no wrongful intent or gross negligence, and provided it does not involve injury to life, body or health, or the taking over of a guarantee or a procurement risk or for the liability under products liability legislation ("Produkthaftungsgesetz").
3. Material contractual obligations are obligations that must be fulfilled for the contract to be performed properly upon their fulfillment the buyer may consistently rely upon.
4. To the extent that our liability is excluded or limited, this applies equally to employees, workers, representatives and vicarious agents of the seller.

§ 11 Place of Fulfillment and Place of Jurisdiction

1. Unless anything to the contrary is determined in the order confirmation, place of fulfillment shall be Tamm.
2. To the extent the buyer is a business person, public law entity or a public law entity with special funds, Stuttgart constitutes the exclusive court of jurisdiction for all disputes arising directly or indirectly of the contractual relationship.

§ 12 Governing Law

These terms & conditions and any and all legal relationships between us and the buyer shall be governed by and construed in accordance with the laws of the Federal Republic of Germany without giving effect to its conflict of laws principles. The Convention of the International Sale of Goods (CISG) shall not apply.

§ 13 Agreed upon Formalities

1. Modifications, amendments and covenants to these terms & conditions as well as to individual contracts must be made in writing to be valid. The same shall apply to modifications of this Section 13.
2. Verbal collateral covenants have not been made.

§ 14 Miscellaneous

1. Any assignment of rights and obligations of the buyer from the contract entered with us require our explicit prior written approval to become effective.
2. If any provision of these terms & conditions or a provision in the scope of other agreements is or becomes invalid, this shall not affect the remaining other provisions or agreements.

January 22th 2019