

1. General – Scope

- 1.1. Our General Terms and Conditions of Sale, Delivery and Payment for Business Owners (hereinafter: Terms and Conditions of Sale) shall apply exclusively; we shall not recognise terms and conditions of the purchaser that conflict with or deviate from our Terms and Conditions of Sale, unless we have given our express written consent to their application. Our Terms and Conditions of Sale shall apply even if we unreservedly make the delivery to the purchaser despite knowing of terms and conditions of the purchaser that conflict with or deviate from our Terms and Conditions of Sale, including any procurement guidelines issued by public-law corporations.
- 1.2. All agreements made between us and the purchaser relating to the implementation of a contract shall only be effective if laid down in writing in the contract. Amendments and supplements to the contract must be in writing. This shall also apply to deviations from this written form clause and to any waiver of this clause.
- 1.3. Our Terms and Conditions of Sale shall also apply to all future transactions with the purchaser.
- 1.4. These Terms and Conditions of Sale shall apply only to business owners within the meaning of Section 14 (1) *BGB* [German Civil Code], legal entities under public law and special funds under public law within the meaning of Section 310 (1) *BGB*.

2. Offer – Offer Documents

- 2.1. If a purchase order addressed to us constitutes an offer within the meaning of Section 145 *BGB*, we shall, unless the purchaser pointed out in writing in the order a specific need for urgency, communicate to the purchaser within 14 days of receipt of the order whether or not we shall carry out this order. If the purchaser has specified in the order a time limit for acceptance of the order, this time limit shall apply with precedence.
- 2.2. Except where otherwise indicated in the offer or otherwise expressly declared by us in writing, our offer shall be subject to change without notice. A contract shall be brought about only if we have acknowledged an order in writing, or we carry out the order.
- 2.3. We shall retain rights of title and copyrights in illustrations, drawings, calculations and other documents; none of these documents shall be made accessible to third parties. In particular, this shall also apply to such written documents designated "confidential". Disclosure to third parties by the purchaser shall take place only if our express written consent has been obtained beforehand.

3. Prices – Payment Terms – Cost of Tools

- 3.1. Except where otherwise ensues from our acknowledgement of the order, our prices shall apply "ex works" (Incoterms 2010), exclusive of packaging; packaging shall be billed separately. Therefore, the transport price shall be charged additionally.
- 3.2. We reserve the right to reasonably alter our prices if costs fall or rise after the conclusion of the contract, particularly as a result of collective bargaining agreements or any change in the price of materials. This shall apply only to price changes that are unforeseeable at the time of the conclusion of the contract and occur later than three months after the conclusion of the contract. We shall furnish the purchaser with proof thereof on request.
- 3.3. All prices are in euros and are exclusive of value-added tax, which shall be added to the prices at the respective rate. It shall only be permissible to deduct a cash discount if this has been expressly agreed upon in writing beforehand.
- 3.4. Except where otherwise agreed upon in writing, all invoices shall be payable in euros, or any other agreed currency, within 30 days of receipt of the invoice after we have rendered the service owed. If payment is made within 10 days of the invoice date, the purchaser shall be entitled to deduct a cash discount at the rate of 2 % of the amount invoiced (exclusive of packaging charges). If the purchaser defaults on payment, we shall charge default interest at the statutory rate. If a higher default-related loss has been provably incurred, we shall be entitled to assert a claim for this.

- 3.5. The purchaser shall have rights of set-off only where its counter-claims have been established by a final and non-appealable court judgement, are undisputed or have been acknowledged by us. The purchaser shall be entitled to exercise a right of retention or a right to refuse performance only if the same preconditions are met in the case of counter-claims or if, in the case of defects in the goods delivered, these defects have been discovered, acknowledged by us or at least credibly demonstrated (e.g. by means of a neutral expert's written confirmation), and, additionally, the purchaser's counter-claim is based on the same contractual relationship.
- 3.6. If we are obliged to perform in advance, and, after the conclusion of the contract, we become aware of circumstances under which our claim to payment is jeopardised by a lack of liquidity on the part of the purchaser, we may, at our option, either demand that security be provided within a reasonable period or that payment be made concurrently with delivery. If the purchaser fails to comply with this request, we shall, without prejudice to further statutory rights, be entitled to rescind the contract.
- 3.7. The purchaser shall not acquire any rights in tools as a result of reimbursing the cost of the tools or a portion of this cost. These tools shall remain solely our property.

4. Delivery Period

- 4.1. The delivery period stated by us shall begin only if all essential issues, in particular technical issues, have been cleared up, and the purchaser has met its obligations. Except where otherwise agreed upon or otherwise ensues from the contractual relationship, the delivery period stated by us shall always be non-binding.
- 4.2. Compliance with our obligation to deliver shall be conditional upon the purchaser having properly performed its obligations in due time.
- 4.3. Delays in delivery due to force majeure or due to unforeseeable circumstances not attributable to us, such as operational disruptions, strikes, lockout, lack of means of transport, difficulties in procuring raw materials, official directives, late delivery by our suppliers, shall not lead to default on our part. Any agreed period for delivery shall be extended by the duration of the hindrance. If the hindrance lasts longer than one month, we and the purchaser may, after the expiry of a reasonable set grace period, rescind the contract in respect of the part not yet performed.
- 4.4. If the purchaser sets us a reasonable time limit after we have entered into default, the purchaser shall be entitled to rescind the contract after this time limit has expired to no avail; in this case, the purchaser shall be entitled to damage claims for non-performance only if default is due to wrongful intent.
- 4.5. The limitations of liability under the above subsection (4) shall not apply insofar as a commercial transaction where time is of the essence has been agreed upon; the same shall apply if, due to default attributable to us, the purchaser may claim that it is no longer interested in the performance of the contract. In these cases, liability shall be limited to the loss foreseeable and typical of this type of contract, except where we can be accused of wrongful intent.
- 4.6. If the purchaser defaults on taking delivery or breaches other duties to co-operate, we shall be entitled to demand compensation for the loss incurred upon us, including any extra expenditure. In this case, the risk of accidental destruction or accidental deterioration of the item purchased shall also pass to the purchaser at the time when the purchaser defaults on taking delivery.
- 4.7. We shall be entitled to make sub-deliveries insofar as this does not conflict with any evident interest of the purchaser. In the event of justified sub-deliveries, we shall also be entitled to bill for these sub-deliveries following their dispatch in each case.
- 4.8. Over-deliveries or under-deliveries shall, without proper performance being impaired as a result hereof, be permissible within a scope of plus or minus 5 % as customary in the trade.

5. Passage of Risk – Packaging Costs

- 5.1. Except where otherwise agreed upon in writing, "ex works" (Incoterms 2010) shall apply as the delivery clause in relation to business owners and public-law corporations.
- 5.2. No transport packaging or other packaging as defined in the *Verpackungsverordnung* [Packaging Regulation] shall be taken back. The purchaser shall take care of the disposal of the packaging at its expense.
- 5.3. We shall take out transport insurance for the delivery at the purchaser's express request; the costs incurred in this respect shall be borne by the purchaser.

6. Warranty for Defects

- 6.1. A commercial purchaser shall only have warranty rights (defect-related claims) if, without delay after receiving the goods, the purchaser examines the goods and gives us written notification of any visible defects without delay following this examination or gives us written notification of any hidden defects without delay after their discovery, specifying the defect (Section 377 *HGB* [German Commercial Code]). If the purchaser is not a merchant, it shall give us written notification of such evident defects within 14 days of their discovery.
- 6.2. There shall be no claims based on defects insofar as there are only insignificant deviations from the agreed quality, or there is only an insignificant impairment of usability.
- 6.3. All parts or services that exhibit a defect in quality within the limitation period shall, at our option, be rectified, replaced or re-performed by us free of charge, insofar as the cause of the defect already existed at the time of the passage of risk.
- 6.4. If defects are reported, the purchaser shall only be permitted to withhold payments to an extent reasonably proportionate to the defects that have arisen. Furthermore, these payments shall only be withheld if the preconditions under Section 3 (5), sentence 2 are met.
- 6.5. If, for reasons not attributable to us, the purchaser wrongly reports the existence of a defect attributable to us, we shall be entitled to charge the purchaser for the reasonable expenditure incurred upon us in connection with eliminating or ascertaining the defect.
- 6.6. Claims of the purchaser on the basis of the expenditure necessary for the purpose of supplementary performance, in particular transport, travel, labour and material costs, shall be ruled out insofar as this expenditure increases as a result of the delivered item having been subsequently transported to a place other than the original place of delivery, unless this transportation is required under the contract. We shall be entitled to charge the purchaser for such extra costs.
- 6.7. Statutory recourse claims of the purchaser against us from the sale of consumables (Sections 478 and 479 *BGB*) shall be ruled out with regard to any agreements made by the purchaser with its customers that go beyond the customers' statutory defect-related claims.
- 6.8. Claims of the purchaser based on defects in quality shall become statute-barred 12 months after the passage of risk. However, the statutory limitation periods for defect-related claims shall apply insofar as these are longer than 24 months, and nothing to the contrary ensues from these Terms and Conditions, i.e. for example for items customarily used for buildings (Section 438 (1), no. 2b *BGB*), for the right of recourse (Section 479 (1) *BGB*) and for structures and construction defects (Sections 634a, 438 (1), no. 2a *BGB*) as well as in cases of defects caused with wrongful intent or by gross negligence and in cases of fraudulent concealment of a defect. These limitation periods shall also apply to defect-related consequential loss falling under Section 437 (3) or Section 634 (4) *BGB* (Damages in the Event of Defects). If supplementary performance is required due to a defect, the limitation period shall merely be suspended until such supplementary performance has been rendered and shall not restart from the beginning.
- 6.9. Before the purchaser can assert further claims or rights (rescission, price reduction, damages, reimbursement of expenditure), we shall first be given the opportunity to render supplementary performance within a reasonable period, except where we have given a guarantee contrary hereto. If supplementary performance fails despite at least two attempts at supplementary performance, or if supplementary performance is impossible, or we refuse to render

supplementary performance, or supplementary performance cannot be reasonably expected of the purchaser, the purchaser may rescind the contract or reduce the fee (reduction of price). The assertion of damage claims by the purchaser shall be governed by Section 8 of these Terms and Conditions.

- 6.10. Damage claims based on defects shall be governed by Section 8 of these Terms and Conditions. Any right to assert further claims or rights against us or our authorised agents on the basis of a defect in quality shall be ruled out.

7. Industrial Property Rights / Defects in Title

- 7.1. Except where otherwise agreed upon, we shall merely be obliged to make the delivery in the country of the place of delivery free from third-party rights.
- 7.2. If we are at fault for any infringement of third-party property rights, we may, at our option, either obtain, at our expense, a right of use sufficient for the agreed or required use and grant this right of use, or alter the delivery item in such a way that the property right is not infringed, or exchange the delivery item, insofar as the agreed or required use of the delivery item by the purchaser is not impaired as a result thereof. If this is not possible for us or cannot be reasonably expected of us, the purchaser shall be entitled to the statutory claims and rights. Damage claims shall be governed by Section 8.
- 7.3. Section 6 (4), (5), (8) and (10) of these Terms and Conditions shall apply accordingly.

8. Damage Claims and Liability on Other Grounds

- 8.1. Any right to assert damage claims for defect-related loss due to defects in our services owed to the purchaser, and any right to assert damage claims for consequential defect-related loss, in particular lost profit due to such defects, shall be ruled out, unless we caused the defects with wrongful intent or gross negligence or by negligently breaching principal contractual duties. This limitation of liability shall also apply to expenditure reimbursement claims of the purchaser based on defects. This limitation of liability for defect-related loss shall not apply to mortal injury, physical injury or health damage caused by slight negligence.
- 8.2. Any right to assert a damage claim for breach of a durability guarantee (Section 443 (2) *BGB*) given by us or third parties for which we are responsible shall be ruled out insofar as we are not at fault for the breach.
- 8.3. In all other respects, damage claims and expenditure reimbursement claims (hereinafter "damage claims") of the purchaser on any legal basis whatsoever, in particular those based on a breach of duties arising from the obligatory relationship or based on an unlawful act, shall be ruled out.
- 8.4. The above shall not apply to claims under Sections 1 and 4 *Produkthaftungsgesetz* [Product Liability Act], in cases of wrongful intent or gross negligence, for mortal injury, physical injury or health damage, in cases where a guarantee for the existence of a feature (guarantee of specific qualities) has been given, or in cases of negligent breach of principal contractual duties. However, our liability in cases of negligence shall be limited to the foreseeable loss typical of this type of contract, except where mortal injury, physical injury or health damage has occurred, where the existence of a feature has been guaranteed, or where otherwise agreed upon.
- 8.5. No change of the burden of proof is associated with the above provisions under subsections (1) to (4).
- 8.6. Insofar as our liability is ruled out or limited, this shall also apply to the personal liability of our employees, workers, personnel, representatives and authorised agents.
- 8.7. Limitation of the claims between the supplier and the purchaser shall be governed by Section 6 (8) of these Terms and Conditions, except where claims arising from tortious producer liability (Sections 823 et seqq. *BGB*) or the *Produkthaftungsgesetz* [Product Liability Act] are concerned.
- 8.8. Principal contractual duties within the meaning of these Terms and Conditions of Sale and Delivery are contractual duties where, in the absence of compliance therewith, the contract would have no value, or only a materially lower value, for the purchaser, and where compliance may be

reasonably expected by the purchaser with due regard being given to all agreements made, and where a breach of these duties can normally not be cured by monetary compensation or can only be cured by monetary compensation to a limited extent. In this sense, principal contractual duties also include such duties where, in the event of non-compliance, the purchaser would normally no longer be interested in the implementation of the contract.

9. Retention of Title

- 9.1. We shall retain title to the delivered items until all payments arising from the business relationship with the purchaser have been received. If the purchaser acts in breach of the contract, particularly if it defaults on payment after having been set a reasonable time limit, we shall be entitled to repossess the item delivered. This shall not apply insofar as the purchaser has already filed for insolvency proceedings, or insolvency proceedings have been instituted, and we are, as a result thereof, not permitted to immediately repossess the items delivered. Repossession of the delivered item by us shall not constitute rescission of the contract, unless we have expressly declared this in writing. Attachment of the delivered item by us shall always constitute rescission of the contract. Rescission of the contract shall not preclude the assertion of damage claims against the purchaser. We shall be authorised to realise the delivered item after having repossessed it. The proceeds from such realisation shall be credited against the purchaser's liabilities – less reasonable realisation costs. The provisions concerning realisation that are laid down in the *InsO (Insolvenzordnung)* [Insolvency Code] shall remain unaffected.
- 9.2. The purchaser shall treat the delivery item with care; in particular, the purchaser shall, at its own expense, adequately insure it against fire damage, water damage and theft on a replacement value basis. Insofar as maintenance or inspection work is necessary, the purchaser shall carry this work out in due time at its own expense.
- 9.3. In the event of attachments or other interventions by third parties, the purchaser shall notify us in writing without delay and provide us with all information necessary for exercising our rights. The purchaser shall be liable to us for the court costs and out-of-court costs in connection with any necessary action under Section 771 ZPO [Code of Civil Procedure] (third-party counter-claim proceedings).
- 9.4. The purchaser shall be entitled to on-sell the delivery item in the ordinary course of business. However, it hereby assigns to us in advance, in the sum of the final invoiced amount (including value-added tax) of our claim, all claims that accrue to it against its customers or third parties from the on-selling, regardless of whether the item delivered has been on-sold without having been processed or after having been processed. The purchaser shall remain entitled to collect this claim even after the claim has been assigned. However, we shall be authorised to collect the claim ourselves if the purchaser no longer meets its payment obligations out of the proceeds received, defaults on payment or has filed for the institution of insolvency proceedings or has ceased payments. In such cases, we may demand that the purchaser disclose to us the claims assigned and the debtors concerned, provide all information necessary for collecting the claims, hand over all relevant documents and give the debtor/debtors (third party/third parties) concerned notification of this assignment. However, it shall not be possible for us to collect the claim insofar as the *Insolvenzordnung* precludes this.
- 9.5. Any processing or remodelling of the delivered item by the purchaser shall always take place on our behalf. If the item delivered is processed with other items not belonging to us, we shall acquire joint title to the new item in the ratio of the value of the delivered item (final amount invoiced, including value-added tax) in relation to the other processed items at the time of processing. In all other respects, the item created as a result of processing shall be subject to the same terms as those applicable to the items delivered under retention of title.
- 9.6. If the items delivered by us are built into land in such a way that they thereupon become the land owner's property, the above subsection (5) shall apply accordingly.
- 9.7. At the purchaser's request, we shall release the security to which we are entitled insofar as the value of our security exceeds by more than 20 %, not merely in the short term, the claims to be secured; it shall be incumbent upon us to select the security to be released.

9.8. If the item delivered is taken abroad, the following shall apply: If the item delivered was delivered prior to the payment of all amounts owed by the purchaser under the contract, the item delivered shall remain our property until full payment has been made, insofar as this is permissible under the law applicable where the item delivered is located. If this law does not permit the retention of title, but allows us to reserve other rights in the item delivered, we shall be entitled to exercise all rights of this kind. The purchaser shall co-operate with all the measures that we take to protect our right of title, or the right taking its place, in respect of the delivery item.

10. Place of Jurisdiction – Place of Performance

- 10.1. Insofar as the purchaser is a merchant, the place where our registered office is situated shall be the place of jurisdiction. However, we shall be entitled to also bring an action against the purchaser at the court that has jurisdiction over its domicile or place of business.
- 10.2. Except where otherwise ensues from our acknowledgement of the order, our registered office shall be the place of performance.

11. Applicable Law, Severability Clause

- 11.1. The legal relations between the parties shall be governed exclusively by German law, excluding the UN Sales Law Convention (UNCITRAL/CISG). The text in German shall be exclusively binding upon us in respect of all written documents.
- 11.2. If individual provisions in the respective contract or in these General Terms and Conditions are ineffective, this shall not affect the effectiveness of the other provisions. In this case, the ineffective clause shall be replaced with a valid provision whose legal and economic effects come closest to what the ineffective provision was evidently supposed to have brought about. The above provisions shall apply accordingly if the contract or these General Terms and Conditions are incomplete.

Gevelsberg, 1 May 2019

N.I.E.R. Stanz- und Umformtechnik GmbH & Co. KG