

General Terms and Conditions - Arcoplast Service GmbH

1. Scope

All our offers and deliveries are only effected on the basis of the following General Terms and Conditions if the purchaser is a merchant, a corporate body under public law or a special fund under public law. General Terms and Conditions, terms of purchase, delivery or sale of the purchaser are hereby explicitly refused.

2. Conclusion and Content of Contracts

- 2.1. Our offers are without engagement. The contract shall only come about by our order confirmation or by the performance of the order.
- 2.2. Agreements deviating from the present terms and conditions shall only apply if they have been confirmed by us in writing; the requirement of written form serves as evidence.
- 2.3. The contractual quality of the delivery object is only defined by our order confirmation. Quality specifications not explicitly contained or referenced in the order confirmation will not become part of the contract.
- 2.4. Unless explicitly agreed upon as being binding in the form of a contract, technical data and specifications in brochures, data sheets, samples or documents belonging to the offer shall only be rough approximations if there are only usual differences between the delivery object and these properties.
- 2.5. We reserve the right to changes due to technical innovations, new regulations or similar developments unless the delivery object and its functions are adversely modified and usability for the contractually intended purpose is impaired. This shall not result in any change in the price.

3. Prices

In default of any special written agreement, our prices are quoted ex works, EXW, without freight and without packaging as Euro net prices plus the legal value added tax in its relevant amount.

4. Deliveries and Services

- 4.1. Reasonable partial deliveries as well as deviations from the order quantity up to +/- 10 % are admissible if they are reasonable for the purchaser.
- 4.2. If for reasons for which we are not responsible we do not receive deliveries or services from our sub-suppliers or subcontractors at all, correctly or in due time despite proper supply or if there are events of force majeure, we will inform purchaser in due time. In this case, we will be entitled to postpone the delivery or service for the duration of the impairment or to rescind the contract in whole or in part for that part of the contract that is still unperformed if we have complied with our duty to inform specified above and have not accepted the procurement risk and/or the production risk. Strike, lockout, official interventions, lack of energy and raw material, transport bottlenecks and operational hindrances for which we are not responsible e.g. due to fire, water and machine damage and all other impairments which - if considered objectively - have not been caused by us in culpable form are equivalent to force majeure.
- 4.3. If a delivery or service date or delivery or service period has been agreed in a binding form or if due to events according to no. 4.2. the agreed delivery or service date or the agreed delivery or service period is exceeded by more than four weeks or if with an unbinding performance date it is unreasonable for the purchaser to abide by the contract, purchaser is entitled to rescind the contract for that part of the contract that is still unperformed. In this case, there are no other rights of purchaser, particularly no claims to damages.
- 4.4. As far as the article to be supplied is only specified according to generic terms, we will only be liable for compensation of damage if we do not prove that we are not responsible for the subsequent performance, delay in the delivery or the defect in the article.

5. Passing of the Risk

Even with articles delivery of which has been paid the risk passes to the purchaser at the time at which the product leaves our factory. If purchaser is responsible for any delayed dispatch, the risk shall already pass to the purchaser upon receipt of the notification of readiness for dispatch.

6. Delay in Performance and Default

- 6.1. The duration of any respite to be set by purchaser is determined to be at least four weeks, starting upon our receipt of the notification by means of which the respite is set.
- 6.2. If we are in default, our liability for damages will be limited to 5 percent of the purchase price in case of slight negligence. Other claims of purchaser shall remain unaffected.

7. Warranty for Defects

- 7.1. Purchaser shall observe the obligations of § 377 HGB (German Commercial Code). The carrier must be notified of defects obvious upon delivery and recording of these defects by the carrier must be initiated. The notification of defects, must contain the most detailed description of the defect possible. If the defect is not notified in due time, all claims of the purchaser will be excluded.
- 7.2. By starting to process, edit, connect or mix it with other objects, the supplied good is regarded as having been approved of by purchaser as contractual. The same applies in case it is forwarded from the original destination.
- 7.3. Our liability for violations of duties due to defects is excluded unless it can be proven that defects and related damage are attributable to defective material, defective construction or defective design or defective assembly instructions. Particularly warranty and liability for the consequences of incorrect use (particularly assembly not complying with the state-of-the-art or the assembly instructions) or natural wear of the goods, excessive use or unsuitable operating equipment as well as the consequences of physical, chemical or electric influences not corresponding to the intended, average standard influences shall be excluded.
- 7.4. Claims of purchaser due to expenses necessary for the purpose of subsequent performance, particularly transport, working and material costs and travel expenses are excluded if the expenses increase as the goods delivered by us have subsequently been brought to any other place than the purchaser's subsidiary unless the shipment corresponds to the intended use.
- 7.5. There are only possible rights of recourse of purchaser against us in case of resale of the goods to the extent to which purchaser has not made any agreements with their buyers exceeding the legal warranty claims.
- 7.6. Notwithstanding § 275 subsection 2 and 3 BGB (German Civil Code) we may deny subsequent performance if all costs for the type of subsequent performance selected by purchaser or the only possible type of subsequent performance alone amount to more than 100% or - if we have acted culpably - to more than 130% of the value of the faultless object. If according to the preceding criteria subsequent performance is not unreasonable, we may deny the type of subsequent performance selected by purchaser if the resulting costs for the subsequent performance exceed the costs incurring with the other type of subsequent performance by more than 10%.
- 7.7. If defects have been notified wrongly, we shall be entitled to request from purchaser compensation of the expenses we incurred.
- 7.8. The period of limitation for warranty claims is twelve months. This does not apply to construction contracts, to objects that have been used for a building according to their usual use and have caused defects in this building, to claims due to the injury of life, body and health as well as to grossly negligent violations of duty by us or one of our legal representatives or vicarious agents. For the delivered part, the period of limitation starts upon the passing of the risk, for the assembly service upon completed acceptance or acceptance which has to be regarded as having been completed.
- 7.9. The preceding regulations of no. 7.8. do not apply to the sale of objects that have already been used; these products are supplied excluding any warranty claims. The preceding limitation of the statute of limitation for used objects does not apply to claims due to the injury of life, body and health as well as to grossly negligent violations by us or one of our legal representatives or vicarious agents.

8. Damages

- 8.1. Claims of purchaser against us and our vicarious agents to damages are excluded; this does not apply to damage from the injury to life, body or health. For the rest, the exclusion of liability will not apply if the damage results from a grossly negligent violation of duties by us or one of our legal representatives or vicarious agents.

- 8.2. The exclusion of liability does only not apply if damage is attributable to the violation of material duties. In this case we will be liable for damage, however only up to the amount foreseeable at the time of contract conclusion or contract negotiation as possible consequence of the violation of duties or considering the circumstances that were known or should have been known to us. Material duties are obligations protecting essential legal positions of the purchaser which have been granted to them by the contract according to its content and purpose. Contractual duties satisfaction of which is imperative for the proper performance of the contract and on the compliance of which purchaser has relied and may rely are also essential.
- 8.3. Imperative liability according to the provisions of the Product Liability Act will also remain unaffected.
- 8.4. Inversion of the burden of proof is not connected to the preceding regulations of section no. 8.

9. Product Liability

If claims are made against us by third parties due to product liability as a product produced by purchaser from the delivery object shows a defect (§ 3 ProdHaftG (Product Liability Act)) which has not been caused by us, purchaser will completely indemnify us from these claims. Purchaser must prove that the defect has been caused by us or our sub-suppliers in whole or in part. In case it has been caused by us in part, we have a corresponding claim to partial indemnification. In the relationship with the purchaser, instruction errors of the product produced by purchaser will in no case be for our account. Purchaser undertakes to conclude satisfactory product liability insurance also including the potential damage that may result from deliveries to foreign countries.

10. Property Rights, Drawings, Samples, etc.

- 10.1. We maintain the property and copyrights in our drawings, samples, labels, figures, photos, models and other documents or objects. They are only provided for personal information and must generally not be copied or duplicated otherwise or forwarded, handed over or made accessible to third persons without our written consent. Any production according to these documents without our explicit written consent is also not admissible. Any unauthorised use is punishable and subject to payment of compensation.
- 10.2. If supply has to be effected according to samples, drawings and models of the purchaser, purchaser is liable for ensuring that by doing so, we do not violate third-party property rights. If referring to any property right available to them, any third party prohibits us to produce and deliver objects produced according to drawings, models or samples we are - without being obliged to check the legal relationship - entitled to discontinue the production and delivery and request compensation of the costs spent, excluding all claims for damages of the purchaser. Purchaser shall pay compensation for all direct and indirect damage that we might suffer from the violation of possible property rights and from the assertion of possible property rights by third parties. With regard to possible costs of the proceedings, purchaser must upon request pay a reasonable advance and generally indemnify us from such costs.
- 10.3. Objects and documents of the purchaser are accepted and kept at their risk.

11. Right of Retention, Offset and Assignment

- 11.1. Purchaser is not entitled to any right of retention.
- 11.2. Purchaser may only assert the right of offset regarding our accounts receivable if the offset claim is undisputed or has been determined in a legally binding way.
- 11.3. Contractual claims cannot be transferred by purchaser without our consent unless the regulation of § 354a HGB applies.

12. Retention of Title

- 12.1. The supplied goods remain our property until our invoices have been paid in full and until all preceding supplies and services including all accessory claims have been paid in full, in case of payment by means of cheque or bill of exchange until the time at which we can dispose of the amount (§ 449 I BGB). The inclusion of individual accounts receivable in an open account and the striking and recognition of balances will not affect the retention of title.
- 12.2. If reserved goods are connected or mixed with goods not belonging to us, we become co-owners of the whole object in the ratio of the invoice values of the supplies and services to the other processed goods at the time of processing, connection or mixture. If the mixture makes the purchaser the sole proprietor, they already now transfer the co-ownership to us in the ratio described above and undertake to keep the new objects for us free of charge.
- 12.3. If purchaser sells reserved goods alone or together with goods not belonging to us, purchaser already now assigns the claims resulting from the resale to us in the amount of the value of the reserved goods with all ancillary rights. If we are the co-owner of the resold goods, the assignment of the claim covers the amount corresponding to the labour value of our co-ownership. Reserving the right to revocation, we entitle the purchaser to collect the accounts receivable assigned to us. If purchaser falls behind regarding their obligations, they must notify us of the debtors of the assigned claims and notify them of the assignment. In such case, we will also be entitled to notify the relevant debtors of the assignment ourselves and to make use of our authority to collect.
- 12.4. In case of non-contractual behaviour of the purchaser, particularly in case of default in payment, we are entitled to take back the reserved goods after reminder and setting of the respite and purchaser is obliged to surrender possession of those goods. Assertion of the retention of title and the pledging of the delivery object by us shall not be regarded as rescission of the contract. Purchaser already at this juncture agrees to the persons commissioned by us with the collection of the reserved goods to access and drive on their premises for that purpose.
- 12.5. Purchaser is only entitled and authorised to resell, use or install the reserved goods in the usual and orderly course of business and only provided that the claims assigned to us (no. 13.3) actually pass to us. Purchaser is not entitled to any other disposition of the reserved goods. Purchaser must particularly not pledge or transfer the delivery object by way of security.
- 12.6. Purchaser shall immediately inform us about compulsory enforcement measures of third parties against the reserved goods or the assigned claims, handing over the documents necessary for the objection.
- 12.7. All goods covered by the retention of title are to be insured by the purchaser at their costs, particularly against fire and theft. All claims against the relevant insurer with regard to the goods covered by the retention of title are hereby assigned to us; we accept this assignment.
- 12.8. If the value of the securities granted to us exceeds our claims by more than 10%, we are obliged to release the granted securities to the extent to which they exceed the agreed cover limit to the purchaser.

13. Place of Performance, Place of Jurisdiction and Applicable Law

- 13.1. Place of performance for the purchaser's payments and for our supplies is the registered office of our company in Vreden/Germany. The exclusive place of jurisdiction for all disputes arising out of or in connection with our supplies is Vreden. We are also entitled to bring a claim at the registered office of the purchaser.
- 13.2. German law applies. The United Nations Convention on Contracts for the International Sale of Goods is excluded.
- 13.3. In case individual provisions are invalid, the remaining preceding regulations will remain completely valid. Void provisions are to be replaced by valid provisions coming closest to the purpose of the contract and the interests of the contractual partners.

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