

Terms of Delivery and Sale

3F GmbH Klebe- und Kaschieretechnik

§ 1 General, Applicability

(1) These terms of sale apply to all our business relationships with our customers (hereinafter also referred to as: "buyer"). The conditions of sale are applicable only if the buyer is an entrepreneur (section 14 of the German Civil Code), a legal entity of the public law or a public-law special fund.

(2) The terms of sale shall apply, in particular, with respect to contracts for the sale and delivery of movable goods (hereinafter also referred to as: goods), regardless of whether the seller is the manufacturer of the goods or purchases them from suppliers. The terms of sale shall apply in their respective version as a framework agreement also for future contracts for the sale and delivery of the goods with the same buyer, without us needing to point this out again.

(3) Our terms of sale shall apply exclusively. Deviating, conflicting or supplementary terms of business of the buyer shall only be incorporated in the contract in as far as we have explicitly agreed to their validity. This approval requirement applies in each case, for example even when we make the delivery to the buyer unreservedly in awareness of his TOB.

(4) Agreements on a case-by-case basis with the buyer (also supplementary agreements, amendments and supplements) always take precedence over the terms of sale. A written contract or our written confirmation is required for the validity of such an agreement. Legally relevant declarations and notifications which need to be submitted to us by the buyer after the conclusion of the contract (e.g. deadlines, reminders, declaration of cancellation), require written form in order to be valid.

§ 2 Conclusion of Contract

(1) Our offers are subject to confirmation and non-binding. This also applies if we have provided the buyer with catalogues, technical documentation (e.g. designs, plans, calculations, references to DIN standards), other product descriptions or documentation - also in electronic format - for which we hold and reserve the property rights and copyrights.

(2) The ordering of the goods by the buyer shall be considered as binding offer. If nothing further arises from the order, we are entitled to accept this offer within 2 weeks of receipt.

(3) The acceptance can either be in writing (e.g. by means of a confirmation of order) or by delivery of the goods to the buyer.

§ 3 Delivery Period and Delays

(1) The delivery period is agreed individually or specified by us upon acceptance of the order.

(2) If we cannot comply with binding delivery deadlines for reasons for which we are not responsible (non-availability of the service), we will inform the buyer immediately and, at the same time, inform him about the estimated new delivery deadline. If the service is also not be available by the new delivery deadline, we shall be entitled to withdraw from the contract in whole or in part; any consideration of the buyer shall immediately be reimbursed. A case of non-availability of the service in this sense includes, in particular, the late delivery by our suppliers if a congruent supply arrangement exists. Our legal withdrawal and termination rights and the legal regulations on the implementation of the contract in the case of an exclusion of liability remain unaffected. The withdrawal and termination rights of the buyer pursuant to section 8 of these terms of sale also remain unaffected.

(3) We reserve the right of partial delivery, provided that this seems advantageous for a speedy processing and the partial delivery is not deemed to be exceptionally unreasonable for the buyer. Additional costs arising from partial deliveries shall not be charged to the buyer.

(4) Delay in delivery is determined by the provisions of the law. In any case, a reminder by the buyer is required.

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

(1) The delivery is made ex works, where the place of performance is also located. At the request and expense of the buyer, the goods are sent to another destination (contract of sale involving the carriage of goods). Insofar as not otherwise agreed, we are entitled to choose the method of shipment (in particular carriers, shipping route, packaging).

(2) The risk of accidental loss and accidental deterioration of the goods will pass to the buyer no later than with the handover. However, upon a contract of sale involving the carriage of goods, the risk of accidental loss and accidental deterioration of the goods, as well as the risk of delay will pass to the carrier, forwarding agent or other person or institution determined to be responsible for the execution of dispatch. In as far as acceptance is agreed, the transfer of risk shall be governed by this. The regulations of the works and services contract law also apply correspondingly in other respects of the agreed acceptance. If the buyer delays in accepting the goods, the transfer shall still be deemed to have taken place.

(3) The buyer shall, if not otherwise agreed, accept the goods on call-off within 8 weeks from the conclusion of the contract. If the buyer does not accept or retrieve the goods within the agreed or appropriate time frame, he falls into default of acceptance after the expiry of a further period of grace of 2 weeks.

(4) If the buyer is in default of acceptance, does not fulfil his commitments or if our delivery is delayed for reasons the buyer is accountable for, we are entitled to request compensation for the resulting damage including additional expenses (e.g. inventory costs).

§ 5 Prices and Terms of Payment

(1) Unless otherwise agreed, our current prices at the time of contract conclusion apply, ex works, plus statutory VAT.

(2) If, after the conclusion of the contract, the costs increase for reasons we are not responsible for and which could not be foreseen in our calculations, we shall be entitled to adapt the prices accordingly.

(3) During a contract of sale involving the carriage of goods, the buyer shall bear the transport costs from the factory and the costs of any insurance required by the buyer. Any duties, fees, taxes and other public charges shall be paid by the buyer. Transport packaging and all other packaging in accordance with the Packaging Ordinance are not taken back and become the property of the buyer; the following are excluded pallets.

(4) The purchase price is payable within 15 days from the date of invoice and delivery, or acceptance of the goods without deduction. With the expiry of the above-mentioned payment deadline the buyer will be in default. During default the applicable default interest rate will be charged on the purchase amount. We reserve the right to claim for further damage caused by default. Our claim for the commercial maturity interest against merchants remains unaffected.

(5) The buyer is entitled to offsetting or retention only in so far as his claim is determined to be legally binding or is undisputed. In the case of defects in the delivery, section 7 paragraph 6 remains unaffected.

(6) If there are indications after conclusion of the contract that our entitlement to the purchase price is at risk through insufficient ability of the buyer to pay (e.g. by an application for the opening of insolvency proceedings), then according to the statutory regulations we are entitled to refuse service and - if applicable after setting a deadline - to cancel the contract. In case of contracts concerning the manufacture of unreasonable objects (individual productions) we can declare the cancellation immediately; the statutory regulations concerning the lack of necessity to set a deadline remain unaffected.

§ 6 Retention of Title

(1) Until complete payment of all our current and future claims arising from the purchase agreement and ongoing business relationship (claims), we reserve ownership of the sold goods.

(2) Prior to complete payment of the secured claims, the goods for which ownership is reserved can neither be pledged nor assigned by way of security to third parties. The buyer has to notify us immediately in writing, if and insofar as there are any accesses of third parties to the goods which belong to us.

(3) In the event of action by the buyer in breach of the terms of the contract, in particular in the event of payment arrears, we are entitled to cancel the contract in accordance with the statutory provisions and request return of the goods subject to retention of title. If the buyer does not pay the purchase price due, we may assert these rights only if we have first set the buyer an appropriate time limit for payment without result or if setting a time limit may be dispensed with according to the provisions of the law.

(4) The buyer is entitled to sell or process the goods under retention of title in the ordinary course of business. In this case, the following provisions shall apply in addition.

(a) The retention of title covers the products resulting from the processing, mixing or connecting of our goods up to the resulting products' full value, and we shall be deemed to be the manufacturer. If the ownership rights of third parties remain in existence during the processing, mixing or combination with their goods, we shall acquire co-ownership in the ratio of the invoice value of the processed, mixed or related products. Incidentally the same shall apply to the produced product as to the goods delivered under reservation of title.

(b) The buyer hereby now already assigns the claims against third parties, which are established from the resale of the goods or products in total or in the amount of our possible co-ownership share, to us as collateral according to the aforementioned paragraph. We accept the assignment. The obligations of the buyer mentioned in par. 2 shall also apply in respect of the assigned claims.

(c) We and the buyer are authorized to collect any debts. We commit, not to collect the claim ourselves, as long as the buyer fulfils his payment obligations to us, is not in default of payment, no application for the opening of insolvency proceedings has been made and there are no other shortcomings in his performance. If this is the case, we can demand that the buyer shall inform us of the transferred claims and debtors, all information necessary for collection, hands over the necessary documents and informs the debtors (third parties) of the assignment.

(d) If the realizable value of the collateral exceeds our claims by more than 10 %, we will at the buyer's request release securities of our choice.

§ 7 Warranty Claims of the Buyer

(1) The buyer's rights in case of material defects and defects in title shall be subject to the statutory provisions, insofar as not otherwise determined below. Special legal requirements for the final delivery to a consumer remain unaffected in any case (supplier regress as per sections 478, 479 of the German Civil Code).

(2) Our liability for defects is based mainly on the quality of the goods agreed on. As regards the quality of the goods, those product specifications which are subject of the order or which have been incorporated in the contract in the same way as these terms of sale shall be deemed agreed upon. In the case of items manufactured to order, excess or short deliveries of up to 10% are deemed as being in accordance with the contract.

(3) In the absence of any agreed specification of the goods, the existence of defects therein shall be determined in accordance with statutory provisions (section 434 para. 1 sentence 2 and 3 of the German Civil Code). For public statements made by third parties (e.g. advertising) however, we do not assume any liability.

(4) The claims of the buyer assume that he his legal obligations with regard to inspection and reporting of complaints (sections 377, 381 of the German Commercial Code) is complied with. In the event that a defect is revealed during the inspection or at a later date, we must be notified immediately in writing. The report is deemed as immediate if it is made within one week, whereby the timely dispatch of the report is sufficient in order to safeguard the deadline. Irrespective of this obligation for inspection and reporting of complaints the buyer must report obvious defects (including false and shortfall in delivery) within one week from delivery in writing, whereby the timely dispatch of the report is also sufficient here in order to safeguard the deadline. Should the buyer fail to conduct proper inspection or report defects, we shall not be liable for any defect not reported.

(5) If the delivered object is faulty we can initially choose whether we shall provide subsequent performance by remedying the defect (subsequent improvement) or by delivery of a faultless object (substitute delivery). Our right to refuse the chosen type of subsequent performance under the statutory pre-requisites remains unaffected.

(6) We are entitled to make remedial performance conditional upon the buyer paying the purchase price due. The buyer is however entitled to retain a part of the purchase price which is reasonable in the ratio to the defect.

(7) The buyer shall allow us the necessary time and opportunity for due subsequent performance and shall in particular hand over the goods concerned for inspection. In the event of the substitute delivery the buyer must return the faulty object to us according to the statutory regulations.

(8) The expenses necessary in connection with inspection and subsequent performance, in particular as regards transport, travel, labor and material costs shall be to our account if a defect does indeed exist. However, should the buyer's demand for repair be proven unjustified, then we can demand the incurred costs be reimbursed by the customer.

(9) In urgent cases, e.g. when the operational safety is at risk, or to prevent disproportionately large damage, the buyer has the right to remedy the defect on his own and claim from us the objectively necessary expenses. We shall be advised without delay, if possible beforehand, of self-remedying of defects. There is no right to carry out rectification, if we are entitled to refuse the supplementary performance according to statutory provisions.

(10) If the subsequent performance has failed or a reasonable deadline which is to be set by the buyer for the subsequent performance has expired unsuccessfully or it is dispensable according to statutory regulations, the buyer can cancel the contract or reduce the purchase price. There is no right of withdrawal in case of a minor deficiency.

(11) Claims of the buyer for damages or reimbursement of fruitless expenses shall only exist according to section 8 and are incidentally excluded.

§ 8 Other Liability

(1) Insofar as these terms of sale including the following provisions do not indicate otherwise, we shall be liable for a breach of contractual and non-contractual obligations under the relevant statutory provisions.

(2) We shall be liable for compensation for damages - regardless of the legal grounds - in the case of intent or gross negligence. In cases of minor negligence we are only liable

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

(b) for the damage resulting from the breach of a material contractual obligation (obligation, whose fulfilment is essential for the proper execution of the contract and upon whose compliance the contract partner does and may regularly rely); in this case, our liability will, however, be limited to the replacement of the foreseeable, typically occurring damage.

(3) The limitations of liability resulting from par. 2 do not apply in as far as we fraudulently concealed a defect or assumed a guarantee for the quality of the goods. The same applies to any claims of the buyer under the Product Liability Act.

(4) Cancellation shall be permissible due to a breach of duty which does not consist in a defect only if we may be held responsible for the breach of duty. A free cancellation of the buyer (in particular according to sections 651, 649 of the German Civil Code) is excluded. Otherwise the statutory requirements and legal consequences shall apply.

§ 9 Limitation

(1) Notwithstanding section 438 para. 1 no. 3 of the German Civil Code, the general limitation period for claims from defects of quality and title is one year from delivery. If acceptance is agreed, the period of limitation shall start with acceptance.

(2) However, if the goods are a building or an object which has been used as a building in accordance with its normal use and which have caused its defectiveness (construction materials) according to the statutory regulations, the limitation period is five years from delivery (section 438 para. 1 no. 2 of the German Civil Code). Special statutory provisions concerning a third party's actio in rem, fraudulent intent of the seller (section 438 para. 1 no.1) or the supplier recourse in case of final delivery to a consumer (section 479 of the German Civil Code) shall remain unaffected.

(3) The above limitations of the sale 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 (sections 195, 199 of the German Civil Code) would, in the individual case, lead to a shorter period of limitation. The limitation periods of the Product Liability Act remain unaffected in any event. Otherwise the statutory limitation periods according to section 8 apply exclusively for damage claims of the buyer.

§ 10 Applicable Law and Place of Jurisdiction

(1) These terms of sale and all legal relations between us and the buyer shall be subject to the law of the Federal Republic of Germany, to the exclusion of all international and supranational (treaty) legal systems, in particular the UN Sales Convention.

Conditions for and the effects of the retention of title pursuant to section 6 are governed by the law on the respective location of the object in as far as, under said law, a choice of law made in favour of German law is not permitted or is void.

(2) If the customer 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 place of jurisdiction for all disputes arising from the processing of this contractual relationship is agreed as being our headquarters in Plüderhausen. However, we are also entitled to take action at the place of general jurisdiction of the buyer.

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Our Terms of Delivery and Sale are available for download at www.3f-gmbh.de.