

# KONRAD HORNSCHUCH AG: GENERAL TERMS AND CONDITIONS OF DELIVERY AND SALE

## 1. General

- (1) The present General Terms and Conditions of Business shall apply exclusively unless otherwise agreed in writing. We shall not accept contrary terms and conditions or the Buyer's general terms and conditions unless we have expressly agreed in writing to their application.
- (2) Our General Terms and Conditions of Business shall apply as set forth in paragraph (1) above also to all future business transactions with the Buyer.

## 2. Offer

- (1) Our offers are made without engagement. All documents relating to the offer, such as illustrations, drawings, stated weights and dimensions shall be deemed approximate unless they have been expressly stated to be binding.
- (2) The order signed by the Buyer is binding. We have the right to accept the offer of a contract implicit in the Buyer's order by sending an acknowledgement of the order within three weeks of receiving it.
- (3) The scope of the order is determined by our written acknowledgement of the order. All collateral covenants and all changes to the order must be in writing.
- (4) Our sales staff and travelling salespeople are not authorized to make verbal agreements, give guarantees, etc. which go beyond the content of our written acknowledgement of order.
- (5) We reserve all property rights and copyrights to information, in particular to illustrations, drawings, calculations and any other documents which are forwarded to the Buyer or third parties. They must not be made accessible to persons other than the Buyer or the said third parties.

## 3. Prices and payment

- (1) The price in the acknowledgement of order is quoted without engagement. It is quoted ex works, exclusive of value-added tax. Value-added tax shall be shown separately in the invoice at the statutory rate applying at invoice date. We reserve the right to alter our prices accordingly if costs are reduced or increased after execution of contract - in particular, on grounds of collective tariff agreements or changes in the price of materials. Proof of this will be given to the Buyer on request.
- (2) The Buyer shall pay the price on receipt of the purchased goods or when the invoice is sent. A discount may be deducted only if this has been specially agreed in writing.
- (3) If justified doubts arise as to the credit-worthiness of the Buyer after execution of contract, we have the right to require advance payment or collateral security within a reasonable period of time. Should the Buyer fail to satisfy this request within the stated period, we shall be entitled to withdraw from the contract after the period has expired.
- (4) Money orders, cheques and bills of exchange will be accepted only by written agreement and only with a view to payment, with all collection and discounting expenses paid.
- (5) The Buyer may offset its claims against our claims only if its counterclaim is uncontested or has been confirmed by a final court judgement. The Buyer may claim a right to withhold payment only if such claim has its basis in the same contractual relationship.
- (6) Default interest shall be charged at a rate 8% p.a. higher than the base rate. This shall not preclude claims to further damages.

## 4. Delivery, delays in delivery

- (1) Delivery deadlines and delivery lead times must be stated in writing. They shall be deemed non-binding unless they have been agreed in writing to be binding. Delivery lead times commence on execution of contract. If amendments to the contract are subsequently agreed, it may be necessary to lay down the delivery deadline or the delivery lead time anew. Adherence to delivery deadlines for goods and services is conditional upon the timely receipt of all goods and services to be supplied by the Buyer, any necessary permits and approvals - in particular, approvals of plans - as well as the fulfilment of agreed payment terms and other obligations. Should the customer fail to fulfil these stipulations in good time, the delivery period shall be extended accordingly.
- (2) Delivery shall be postponed by a reasonable period of time - even within a delay in delivery which has already occurred - if unforeseen events occur which we could not avert despite reasonable precautions under the circumstances of the case, for example, disturbances of operations, official interventions, difficulties with energy supply, delays in the delivery of essential outsourced components. The same shall apply in the event of strikes and lockouts. We have the obligation to inform the Buyer of such occurrences without delay.
- (3) Delivery shall be deemed to have been made on time if the purchased goods have left the factory or notification of readiness for delivery has been given before the delivery lead time has expired. If a non-binding delivery date or delivery lead time has been exceeded by four weeks, the Buyer may request us in writing to make delivery within a reasonable period of time. Once this period has expired, we shall be deemed in default.
- (4) Besides delivery, the Buyer may demand indemnification for any loss or damage incurred through the delay. Should we, our representatives or vicarious agents be guilty of malicious intent or gross negligence, we shall be held liable as provided by law. In the case of gross negligence or of culpable breach of essential contractual provisions, however, as set forth in sentence 5 of the present paragraph, our liability shall be limited to foreseeable losses or injuries which are typical for the type of contract in question. For the rest, our obligation to pay damages on grounds of delay in delivery shall not exceed 15% of the agreed remuneration (including value-added tax) as set forth in sentence 5 of the present paragraph. All Buyer's claims in excess of this are barred. The above limitations shall not apply to liability on grounds of injury to life, limb and health.
- (5) Should we be in arrears with delivery, the Buyer may set us a reasonable period of grace stating that it will refuse to accept the goods after expiry of such period. Once the set period of grace has expired without effect, the Buyer shall have the right to withdraw from the contract by making a written declaration to this effect, or may demand damages in lieu of performance. Paragraph 4 shall apply analogously to the claim to damages in lieu of performance. Once the set period of grace with the threat to refuse acceptance has expired without effect, there is no longer entitlement to delivery.
- (6) At our request, the Buyer shall declare within a reasonable period of time whether, on account of the delay in delivery, it will withdraw from the contract or insist upon delivery being made.
- (7) Deliveries and services may be made in instalments insofar as the Buyer can be reasonably expected to accept this.

## 5. Passage of risk, packaging, transportation insurance

- (1) The risk of accidental destruction and accidental impairment of the purchased goods shall pass to the Buyer when the goods leave our works' premises. The same shall apply if - at the Buyer's request - the purchased goods are sent to a destination other than the Buyer's business address and are handed over to a forwarding agent, carrier or to any other person who may have been appointed to perform shipment.
- (2) We shall not accept returned packaging provided for transportation purposes or any other forms of packaging in accordance with packaging regulations. An exception is made for reusable packaging, in particular reusable pallets and plastic side-pieces. The Buyer shall provide for the disposal of packaging material at its own expense.
- (3) If the Buyer so wishes, the purchased goods will be covered by transportation insurance. The costs thereby incurred shall be borne by the Buyer.

## 6. Liability for defects, other liabilities, limitation period

- (1) The Buyer shall report defects in the purchased goods without delay, but not later than ten (10) days from their discovery, stating the date on which they first appeared together with a detailed description of such defects in writing. Should the notification fail to comply with these requirements, all liability for the defects will be repudiated.
- (2) If notification is duly made, we shall be liable for defects in the purchased goods as follows: insofar as a defect exists, we shall, at our option, either repair the defect or deliver goods free of defects (subsequent performance). A prerequisite for liability for defects is that they are not merely minor defects. Should one or both types of subsequent performance be impossible or unreasonably difficult, we shall be at liberty to refuse to provide it. We may also refuse subsequent performance as long as the Buyer has not duly paid for the defect-free portion of the scope of delivery. We shall bear the expenses to be incurred for subsequent performance. This shall not apply to expenses incurred because the purchased goods were moved to a place other than the Buyer's place of business unless this relocation is required by the purpose for which they are used.

- (3) If subsequent performance as set forth in paragraph 2 is impossible or too difficult, or if it fails twice, the Buyer has the option either to reduce the price accordingly or to withdraw from the contract as provided by law. This applies, in particular, in cases of culpable delay or refusal to provide such subsequent performance. The above provisions also apply when the wrong goods are delivered or the quantity falls short of the ordered quantity.
- (4) We shall be held liable in cases of malicious intent or gross negligence on our part, or on the part of one of our representatives or vicarious agents as required by law. For the rest, we shall be held liable only pursuant to the Produkthaftungs-gesetz (German law regulating liability for products) for injury to life, limb or health or on grounds of breach of essential contractual obligations. However, claims to damages on grounds of a breach of essential contractual obligations is limited to foreseeable loss or damage which is typical for this type of contract. Also in cases of gross negligence, liability is limited to the foreseeable loss or damage which is typical for the type of contract, unless it is one of the exceptional cases set forth in sentence 2 of the present paragraph.
- (5) Liability for loss or damage - e.g. damage to other goods - caused by the purchased goods to the Buyer's or a third party's goods and interests which enjoy legal protection is entirely barred, however. This shall not apply in cases of liability on grounds of malicious intent or gross negligence or of injury to life, limb or health or where such loss or damage following a breach of essential contractual provisions is foreseeable and typical for this type of contract. In cases of gross negligence or following breaches of essential contractual provisions, liability shall be limited to foreseeable losses or damage which are typical for this type of contract.
- (6) The provisions of the above paragraphs 4 and 5 extend to indemnification as well as to performance and damages in lieu of performance, irrespective of the legal grounds thereof, in particular on grounds of defects, the breach of obligations under the contractual relationship or on grounds of tortious acts. They also apply to compensation to a refund of expenses incurred to no avail.
- (7) The period of limitation for claims and rights on grounds of defect in the purchased goods is one year calculated from the date of the passage of risk, or, in the case of the goods taken over by a forwarding agent, carrier or any other person who may have been appointed to perform shipment, upon being taken over by these. The period of limitation set forth in sentence 1 above also applies to claims to damages not connected with a defect. However, the limitation period set forth in sentence 1 above shall not apply in the cases set forth in Article 438 par. 1 clause 1 BGB (the German Civil Code) (Legal defects in immovables), Article 438 par. 1 clause 2 BGB (Buildings, objects used in buildings), Article 479 par. 1 BGB (Contractor's right of recourse) and Article 634a par. 1 clause 2 BGB (Buildings or work whose performance consists in the provision of planning or supervisory services). The periods set forth in the above sentence are subject to a period of limitation of three years. Claims to abatement and the exercise of the right of withdrawal on grounds of a product defect are barred insofar as the claim to subsequent performance is barred by the statute of limitations.
- (8) The limitation periods set forth in paragraph 7 above do not apply in cases of malicious intent, of fraudulent concealment of defects, in cases of claims to damages on grounds of injury to life, limb, health and liberty, in cases of claims pursuant to the Produkthaftungsgesetz, in cases of grossly negligent breaches of obligations or in the case of breaches of essential contractual obligations.
- (9) Insofar as our liability is barred or limited, this also applies to the personal liability of our employees, representatives and vicarious agents.

## 7. Reservation of title

- (1) We reserve title to all the purchased goods we have delivered until the Buyer has paid all current and future claims under the business relationship.
- (2) In the event of conduct in breach of contract on the Buyer's part, in particular default on payment, we shall have the right to recover the goods. The Buyer hereby already agrees to such recovery. Recovery shall be deemed withdrawal from the contract only if we have expressly stated this to be the case. The costs incurred for such recovery (in particular transportation costs) shall be borne by the Buyer. Furthermore, we have the right to prohibit the Buyer from selling or processing the purchased goods in which title is reserved and to revoke the authorization to collect payments (paragraph 5 below).
- (3) The Buyer shall handle the delivered purchased goods with care. In particular, it has the obligation to insure them adequately at their replacement value at its own expense against elemental forces and theft. Any claims against the insurance company derived from this are hereby assigned to us.
- (4) The Buyer shall not pledge the delivered goods or claims to payment taking their place, or transfer them by way of security or otherwise assign them. In the event of attachment or other interventions by third parties, the Buyer shall notify us without delay in writing so that we can file action pursuant to Article 771 ZPO (rules of civil procedure). Pursuant to Article 771 ZPO, the Buyer shall bear any costs of such legal action which may remain despite our having won our case.
- (5) The Buyer has the right to sell, process or commingle the purchased goods in the course of its ordinary business. However, it hereby assigns all the claims it may have from such sales, processing, commingling of the purchased goods, or on any other legal grounds (in particular in connection with collateral security or tortious acts) in an amount corresponding to the invoiced total amount, including value-added tax. Notwithstanding assignment, the Buyer remains authorized to collect such claims, although our own right to collect claims shall not be affected. However, we undertake not to collect the claim as long as the Buyer fulfils its payment obligations from the revenue it receives, is not in arrears with payments, no action for insolvency has been filed against it, and it has not ceased to make payments. Otherwise, at our request, the Buyer shall inform us of the assigned claims and of the names of the debtors, shall provide all the information required to collect the debts, hand over the relevant documents and inform the debtors (third parties) of the assignment. In the event of a breach of contract (default on payment in particular), we may revoke the Buyer's authorization to collect payments.
- (6) Reservation of title extends to the full value of products created through the processing, mixing and commingling of the products we have delivered. Such measures shall be deemed to have been taken on our behalf so that we are deemed to be the manufacturer. If, after processing, mixing or commingling with parts belonging to third parties, the latter continue to have title to the products, then we shall acquire a share of the property therein in proportion to the actual value of such parts.
- (7) The Buyer assigns to us also the claims securing our claims against it which are created against a third party through the attachment of delivered purchased goods to land.
- (8) The collateral security to which we are entitled will not be included insofar as its value exceeds the nominal value of our claims by more than 20%.

## 8. Lump-sum damages

- Should we have a claim to damages or to depreciation against the Buyer, its representatives or its vicarious agents - irrespective of the grounds thereof - we shall have the right to demand 20% of the agreed remuneration without further proof as indemnification or value reduction. The right to claim higher damages or higher depreciation is reserved. The Buyer is at liberty to prove that a damage or depreciation either has not taken place at all or is substantially lower than the lump-sum claimed.

## 9. Concluding provisions

- (1) The applicable laws are the national laws of the Federal Republic of Germany barring the application of the UN Convention on the International Sale of Goods (CISG).
- (2) The place of jurisdiction and performance is the place where we have our registered offices. However, we shall have the right to file our claims at any other court having jurisdiction.
- (3) Should any provision be or become void either wholly or in part, this shall not affect the validity of the remaining provisions.

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