

Sales, Delivery and Payment Conditions, Status 1/2011

§ 1 Scope

These general terms and conditions are applicable to all deliveries and performance carried out by us on behalf of our contractual partner. They shall also apply, without further notification, to all future deliveries and performance carried out by us on behalf of our contractual partner. Our general terms and conditions shall apply exclusively. They shall also apply when we carry out a delivery to the customer despite being aware of conditions which are contrary to or deviate from our sales conditions.

Our sales conditions shall only apply to dealings with entrepreneurs within the meaning of § 310 Sec.1 BGB (German Civil Code).

§ 2

Conclusion of contract / Goods to be delivered

Our tenders are always subject to confirmation and are not binding. In the absence of any other contract, the delivery contract comes into effect with the order placed by the contractual partner or the commencement of deliveries by our company. In the event of an equipment overhaul, performed by us or by a neutral service company acting on our behalf, indicates that the used device does not meet our high quality standards, we will report this fact to you immediately and reserve the right to withhold delivery of the device. In the event that we confirm acceptance of the order in writing, our confirmation of order is authoritative for the scope of the delivery. This also contains a separate reference to the right of withdrawal referred to above.

The goods to be delivered correspond to the equipment configuration or product description indicated in the offer text. The technical data and product information enclosed with the offer serve only as a demonstration and do not describe the scope of delivery and do not represent any guarantee for the nature of the goods to be delivered. In particular, public statements made by us, the manufacturer, his agents or third parties (e.g. representations of product features in public) contain no descriptions of the goods to be delivered which supplement or modify this specification of services.

§ 3

Prices and terms of payment

The prices quoted are applicable for delivery from our stores and are net prices subject to costs for packaging, freight, installation, postage, insurance expenses, any bank charges and ancillary costs.

The legally valid rate of value added tax is not included in our prices and shall be charged at the rate valid on the day the invoice is issued and itemised in the invoice.

Our invoice is to be paid in full upon delivery and receipt of the invoice.

§ 4

Rights of retention and set-off

In the event of default on payments, we are entitled to make further deliveries dependent upon the payment in full of outstanding payments.

Furthermore, we are also entitled to refuse to perform services in the event that circumstances occur, subsequent to conclusion of contract which give rise to fears that the counter-performance of the contractual partner will not be concluded in time or in its entirety unless the contractual partner affects the performance or provides sufficient security. This shall particularly apply if, subsequent to conclusion of contract, our credit insurer refuses to insure the purchase price for payment of the goods to be delivered on the grounds that the contractual partner is not credit-worthy.

In the event of defects, the contractual partner shall not be entitled to a right of retention, insofar as this is not in reasonable proportion to the defects and to the estimated cost of supplementary performance (in particular of correcting the defects).

Even if notification of defects has been given or counterclaims been asserted, the contractual partner is only entitled to set-off if the counterclaims have been legally established, acknowledged by us or are undisputed. The contractual partner is only authorised to exercise his right, if his counterclaim is based on the same contract.

If the contractual partner is a trader and the contract is a component part of his business, his notification of defects shall neither affect the obligation to pay nor the time for payment, and the contractual partner waives his right to refuse performance and his right of retention unless we are guilty of gross violation of contract or the counter-claims of the contractual partner based on his right to refuse performance or his right of retention are undisputed, legally established or recognised.

§ 5

Retention of title

We retain title of the goods delivered until full settlement of all demands arising in connection with this contract. If the customer acts in breach of contract, in particular in cases of default of payment, we are authorised to take back the object of purchase. The taking back of the object of purchase constitutes a withdrawal from the contract. Following the taking back of the object of purchase, we are authorised to dispose of it, and the proceeds from this disposal shall be set off against the accounts payable by the customer after deduction of reasonable disposal costs.

The customer is obliged to handle the object of purchase with care and is obliged in particular to insure it at its replacement value at his own expense against damage by fire, water and theft. Insofar as maintenance and inspection work is necessary, the customer must perform this in good time and at his own expense.

In the event of attachments or other interventions by third parties, the customer is to inform us immediately in writing so that we can take legal action in accordance with § 771 ZPO (Code of Civil Procedure). Insofar as the third party is not able to reimburse us with the judicial and extrajudicial costs of legal action in accordance with § 771 ZPO, the customer shall be liable for our incurred loss.

The customer is entitled to re-sell the object of purchase in the ordinary course of business; in so doing, however, he assigns to us all claims against his buyer or third party, to the sum of the final invoice amount (including VAT) of our claim, which arise from the re-sale, irrespective of whether the object of purchase was re-sold without or after processing. The customer remains authorised to collect this claim even after assignment. Our authorisation to collect the claim ourselves remains unaffected by this. We undertake, however, not to collect the claim as long as the customer fulfils his payment obligations from the received proceeds, is not in default of payment and, in particular, so long as no application for the opening of conciliation or insolvency proceedings has been made and payments have not been suspended. Should this be the case, however, we can demand that the customer disclose the assigned claims and the debtors, provide all necessary details for collection and inform the debtors (third parties) immediately of the assignment.

Processing or remodelling of the object of purchase by the customer is always carried out on our behalf. In the event that the object of purchase is processed with other items which are not owned by us, we shall thus acquire co-ownership of the new item in the proportion of the value of the object of purchase (final invoice amount, including VAT) to the other processed items at the time of processing. As for the rest, the same shall apply to the item arising from processing as to the object of purchase under reserve.

Should the object of purchase be inseparably mixed with other items which are not owned by us, we shall thus acquire co-ownership of the new item in the proportion of the value of the object of purchase (final invoice amount, including VAT) to the other mixed items at the time of mixing. If mixing occurs in such a way that the item of the customer is to be seen as the main item, it is agreed that the customer shall transfer co-ownership to us proportionately. The customer shall hold the ensuing sole ownership or co-ownership for us.

The customer also assigns to us the claims for securing our claims against him which arise against a third party from the linking of the object of purchase with a property.

At the request of the customer, we undertake to release the securities to which we are entitled inasmuch as the realisable value of the securities exceeds the claims to be secured by more than 10%; the choice of the securities to be released shall be incumbent on us.

§ 6

Delivery / Time of delivery and performance

Unless otherwise specified in the order confirmation, delivery is from our stores. Packaging will not be taken back. Delivery dates or deadlines which are not agreed to be explicitly binding are exclusively non-binding. The start of the delivery time we have specified is dependent on the clarification of all technical issues. If we

undertake delivery, this is free to kerbside (at ground level only, as far as the first door). If the customer should require free delivery to the door or the point of use, this is to be agreed with us in advance. The contractual partner is to bear the ensuing additional costs in full. Should one of our employees be requested by the contractual partner to help carry the goods inside the premises, the contractual partner is to bear the risk.

The agreed delivery time commences in principle at conclusion of contract but not, however, until the contractual partner has supplied all the documentation, materials, information required from him, all necessary approvals and licences, plus any agreed advance payments. The plea of non-performance remains reserved. The delivery time is deemed adhered to when the goods to be delivered have left our stores by this time or the contractual partner has been given notice of delivery. The delivery time shall be extended by a reasonable period in the event of force majeure or the occurrence of unusual events such as revolution, strikes, lock-outs, fire, seizure, embargo, limitations to fuel consumption imposed by national or local legislation, insofar as these events are not our responsibility and we have not been able to prevent these events in spite of all our efforts and these events have an effect on the timely fulfilment of the contract. If the extension of the delivery time due to these events is unreasonable, the contractual partner is entitled to withdraw from the contract after a reasonable period set for fulfilment has been granted and expired or, insofar as the contractual partner is interested in partial deliveries, to withdraw from the part of the contract which has not been fulfilled. In the event that we are in default on deliveries, the contractual partner is entitled to withdraw from the contract after a reasonable period for fulfilment has been granted combined with the threat of refusal after this period has fruitlessly expired or, insofar as the contractual partner is interested in partial deliveries, to withdraw from the part of the contract which has not been fulfilled. Reminders and fixing of deadlines on the part of the contractual partner must be made in writing in order to be effective.

Further claims of the contractual partner – in particular claims for compensation for non-fulfilment or default – are excluded, insofar as nothing else is stipulated in § 8. Delivery before expiry of the delivery time and partial deliveries are permissible insofar as contrary interests of the contractual partner are not unreasonably impaired. Insofar as the contractual partner, without our express request or without the presence of the prerequisites for withdrawal from the purchase contract, returns to us the goods to be delivered, the contractual partner is obliged to pay us a storage fee amounting to € 3.00 plus the statutory rate of VAT for each day that the goods to be delivered are stored on our premises. The contractual partner reserves the right to prove a less significant loss; at the same time we reserve the right to prove a more significant loss and assert this claim.

§ 7

Transfer of risk

The risk of damage to and loss of the goods is transferred to the contractual partner:

a.) insofar as the goods are dispatched from our premises, at that point in time at which we inform the contractual partner that the goods are ready for collection.

b.) insofar as the goods are not dispatched from our premises, upon handing-over of the goods to the haulier or the person named by the contractual partner who is to transport the goods.

c.) insofar as transport of the goods is performed on our behalf and/or is performed using our fleet of vehicles, at that point in time at which the goods are unloaded at the premises of the contractual partner.

§ 8

Liability for defects / Liability

We are liable for defects in the goods to be delivered - which includes missing assured characteristics - in accordance with the following provisions.

Lamps, glass components and other parts subject to wear are excluded from this liability for defects in used equipment.

The contractual partner is obliged to inspect the delivered goods for obvious defects which an average customer would also readily notice (§ 377 HGB (German Commercial Code)). Obvious defects also include missing manuals as well as considerable, easily noticeable damage to the goods.

Notification of such obvious defects is to be made in writing within two weeks of delivery. We are not bound by the guarantee if the contractual partner has not made timely notification in writing of an obvious defect.

In the event of an infringement of the inspection and notification obligation, the goods are deemed approved in consideration of the defect in question. Insofar as the contractual partner is a trader and the contract is a component part of his business, these conditions are supplemented by § 377 HGB.

Defects which occur within the period of limitation for claims for defects and of which timely notification is given will be corrected by us upon corresponding notification. In the event of replacement with a defect-free item, the contractual partner is obliged to give back the defective goods.

If the defect can not be corrected within a reasonable period or if correction of the defect or replacement with a defect-free item is deemed failed for any other reasons, the contractual partner can choose to demand a lowering of the fee (price reduction) or withdraw from the contract. Correction of a defect can only be deemed failed if we have been given sufficient opportunity to correct the defect or replace it with a defect-free item, without achieving the desired result; if the correction of the defect or its replacement of the defective goods with a defect-free item is not possible; if we are prevented or unduly hindered herein; or if unreasonableness is given for other reasons.

In any case, subsequent improvement is deemed to have failed only after the second unsuccessful attempt. Furthermore, we can refuse the type of supplementary performance chosen by the contractual partner if this is possible only at disproportionate cost, whereby in particular the value of the item in defect-free condition and the significance of the defect should be taken into account and whether it would be possible to fall back on a different type of supplementary performance without putting the contractual partner at a significant disadvantage.

The contractual partner is to send back to us the defective goods for repair or replacement at his own risk. Replaced goods or parts thereof pass into or remain in our possession.

We accept no liability for defects with regard to the possible availability of spare parts/service with regard to the delivered goods.

We shall not be held liable for breaches of contract due to ordinary negligence, insofar as these do not concern essential contractual obligations, for damages arising as a result of injury to life, limb or health, which affect guarantees or which concern claims under product liability law. The same shall apply to breaches of contract by our agents.

Liability is limited in the event of negligent breach of contract by us or our agent to 20 % of the net purchase price, insofar as this amount covers the damage which is foreseeable and typical for the contract, and the liable party is not guilty of gross or culpable negligence.

§ 9

Taking back of equipment

We take back new devices sold to trade customers after termination of use according to the so-called "Elektrogesetz" (Electrical and Electrical Equipment Act) and dispose of them in accordance with regulations. The customer is, however, to assume the ensuing return delivery and disposal costs, or to reimburse us for them. The customer is to inform us in writing of the termination of use.

§ 10

Place of fulfilment / Place of jurisdiction / Applicable law / Closing provision

Place of jurisdiction is our registered office, insofar as the contractual partner is a trader, we are, however, authorised to institute proceedings against the customer at the court at his place of residence. The laws of the Federal Republic of Germany shall apply; the United Nations Commission for International Trade Law is excluded. Unless otherwise specified in the order confirmation, our place of fulfilment is our registered office.

Should any one of the stipulations of these general delivery and payment conditions be or become invalid or unenforceable, the validity of the remaining stipulations of these general delivery and payment conditions shall not be affected.