

General Terms and Conditions Andresen GmbH

§1 General – Scope

1. Our General Terms and Conditions apply exclusively; any contradictory or deviating Terms and Conditions of the customer shall be void, unless we have accepted them expressly in writing. Our General Terms and Conditions shall also apply if we render delivery without any reservation whilst having knowledge of the deviating customer's Terms and Conditions.
2. Our General Terms and Conditions apply only for companies as defined in § 310 Section 1 BGB (German Civil Code).
3. Our General Terms and Conditions also apply for any future business with the customer.

§2 Offer

Our offer shall be non-binding, unless stated otherwise in the order confirmation.

§3 Prices – Terms of Payment

1. Unless stated otherwise in the order confirmation, our prices shall be „ex works“, excluding packaging; the latter will be invoiced separately.
2. The statutory value added tax (VAT) is not included in our prices; the statutory amount will be stated separately in the invoice at the rate applicable on the day of invoicing.
3. The deduction of discounts requires a separate written agreement.
4. The customer shall only be entitled to set-off rights if his counterclaims have been legally established, undisputed or acknowledged by us. Furthermore, the customer shall be entitled to exercise his right of retention in so far as his counterclaim is based on the same contractual relationship.

§4 Delivery Time

1. The delivery time specified by us shall only commence after all technical questions have been resolved.
2. Furthermore, the fulfilment of our delivery obligation shall be conditional upon the timely and proper fulfilment of our customer's obligations. We reserve defence of non-performance of the contract.
3. Should the customer be in default of acceptance or culpably violate any obligations to cooperate, we shall be entitled to demand compensation for the resulting damage incurred including any possible additional expenses, especially due to required repeated travel. We assert the right to assert further rights or claims.
4. If the conditions set forth in section 1 are fulfilled, the risk of accidental loss or deterioration of the delivered goods shall pass to the customer at the time the customer defaults on acceptance or payment.

§5 Passing of Risk – Packaging Costs

1. Unless otherwise stated in the order confirmation, delivery shall be deemed agreed „ex works“.
2. The return of packaging requires a separate agreement.
3. If requested by the customer, we will cover the shipment with transport insurance; the costs incurred to this extent will be borne by the customer.

§6 Liability for Defects

1. Claims for defects asserted by the customer require that he has properly complied with the legally due obligations according to § 377 HGB (German Commercial Code, duties of investigation and notification of defects).
2. We shall be liable in accordance with the statutory provisions insofar as the customer makes claims for damages that attributable to intent or gross negligence on our part, on part of our legal representatives or vicarious agents. If we are not held liable for intentional breach of contract, the liability for damages shall be limited to foreseeable, typically occurring damages.
3. We shall be liable pursuant to the statutory provisions, insofar as we culpably violate an essential contractual obligation; in this case, too, the liability for damages shall be limited to foreseeable, typically occurring damages.
4. Furthermore, if the customer is entitled to replacement of the loss instead of the performance due to negligence in the performance of our duties, our liability shall be limited to replacement of the foreseeable, typically occurring loss.
5. Any liability on account of assuming a warranty, due to culpable injury to life, limb or health remains unaffected; this shall also apply for compulsory liability in accordance with product liability law.
6. Unless stipulated otherwise in the previous sections, any liability is excluded.

§7 Overall Liability

1. Any liability exceeding the liability for damages stated in in § 6 shall be excluded, irrespective of the legal nature of the claim asserted. This applies in particular for liability for negligence in contracting, due to other breaches of duty or claims for compensation for material damage pursuant to § 823 BGB (German Civil Code).
2. This limitation as specified in section 1 shall also apply where the buyer in lieu of a claim to compensation for damages demands compensation of unnecessary expenditures in lieu of performance.

3. As far as the liability for damages against us is excluded or restricted, this shall also be valid with respect to the personal liability for damages of our employees, staff members, representatives and vicarious agents.

§8 Reservation of Title

1. We reserve title in the delivered goods until the receipt of all payments from the delivery contract. If the customer acts in violation of the contract, in particular in case of default in payment, we shall be entitled to claim back the delivered goods. Claiming back the delivered good by us constitutes a withdrawal from the contract. After taking back the delivered goods we shall be entitled to sell them otherwise or utilize them; the proceeds of sale are used to reduce the customer's debts - minus appropriate utilization costs.
2. The customer shall be obliged to handle the delivered goods with care. In particular, he shall be obliged to insure them at his own cost at the original value against damage by fire, water and theft. Should maintenance and inspection work be necessary, the customer must perform such work in good time and at his own expense.
3. In the event of attachments or other interference by third parties, the customer shall be obliged to inform us in writing without delay so that we can file a suit in accordance with § 771 ZPO (German Code of Civil Procedure). To the extent to which the third party is not able to reimburse judicial and extra-judicial costs of a suit according to § 771 ZPO, the customer shall be liable for our loss.
4. The customer shall be entitled to resell the delivered goods in the course of proper business; however, the customer already now assigns to us all the accounts receivable arising from the resale to his customers or third parties to the amount of the final invoice (including value added tax) of our claim, independent of the fact whether the delivered goods were resold without or after processing. The customer shall continue to be entitled to enforce such claims after they have been assigned. This does not affect our authorization to collect the receivables ourselves. However, we agree not to recover debts ourselves as long as the customer complies with his payment obligations from the collected proceeds, does not default in payment and, in particular, provided that no petition for the opening of composition or insolvency proceedings or suspended payment have been filed. In this case we can demand that the customer disclose to us the assigned receivables and the respective debtors and that the customer provide us with all particulars required for collection, hand over to us the appurtenant documents, and notify his debtors (third party) of the assignment.
5. Processing or alteration of the delivered goods by the customer shall always be carried out for us. Should a delivered good be processed together with other items not belonging to us, we shall acquire co-ownership rights of the new goods in the proportion that the value of the delivered goods (commercial invoice end amount, including value-added tax) bears to the commingled goods at the time of processing. The goods created through processing or combining shall be subject to the same provisions as the delivered goods to which title is retained.
6. Should the goods be combined together in such a way that the customer's item is considered to be the main object, it is agreed that the customer shall assign co-ownership to us proportionally. The customer shall keep the resulting title to sole ownership or joint ownership on our behalf.
7. The customer shall also assign to us the claim to secure demands against him arising from connecting the delivered goods to a property of a third party.
8. Upon the customer's request, we engage to release the securities due to us insofar as the value of the realizable securities exceeds the secured accounts receivable by more than 10%; the securities release shall be at our discretion.

§9 Cost Estimates

Exceeding a cost estimate by up to 20 % does not constitute a substantial exceedance and shall not oblige us to notify the customer thereof.

§10 Place of Jurisdiction – Place of Performance

1. If the customer is a merchant, the place of jurisdiction shall be our registered office; we shall also be entitled to sue the customer at his local court.
2. The law of the Federal Republic of Germany shall apply.
3. Unless stated otherwise in the order confirmation, our registered office shall be the place of fulfilment.