



## **General Terms and Conditions of Sale, Delivery and Payment** **of von den Steinen GmbH & Co. KG, Remscheid**

### **1. Scope**

1.1 The following General Terms and Conditions of Sale, Delivery and Payment – hereinafter referred to GTCs – apply exclusively to all deliveries and services our company renders to businesspersons within the meaning of § 310 Para. 1 Clause 1 of the German Civil Code (BGB), pending individual contractual agreements. Terms and conditions of the contractual partner which differ from ours and have not been expressly acknowledged by us in writing shall not apply.

1.2 Our GTCs shall apply within the scope of ongoing business relationships, also for future sales transactions.

1.3 To the extent that our GTCs do not otherwise stipulate, the provisions of the German Commercial Code (HGB) regarding commercial transactions shall initially apply to the purchase and only thereafter the provisions of the BGB.

### **2. Form and content of contracts of purchase**

The order of our contractual partner is a binding offer which we shall be able to accept within three weeks by sending an order confirmation or the goods ordered. Additions, alterations or verbal agreements are only effective if we confirm them in writing.

### **3. Prices and terms of payment**

3.1 Our list prices, effective on the day the contract is concluded, shall apply. If the agreed period of delivery amounts to more than four months, then the list prices at the time the delivery period expires shall apply insofar as no agreement to the contrary has been made. For setup, commissioning and introduction, our price lists for field service rates effective at the time of the service shall apply. Statutory VAT currently in effect must be added to all prices, which apply ex warehouse in Remscheid, excluding packaging, postage/freight charges, and insurance. The net minimum order value for domestic orders and for orders from EU member states is € 100.00, the net minimum value for all other foreign orders is € 1,000.00. If these values are not reached, an additional processing fee of € 10.00 plus the effective VAT shall be charged to cover the extra effort and expense.



3.2 If not otherwise agreed, our bills shall be payable within thirty days of the billing date without deductions. If paid within fourteen days, we grant a 2% discount. All bills are payable for us free of charges regardless of the receipt of the goods and the right of complaint. Notification of readiness to ship is equal to delivery. Bills of exchange and checks shall only be accepted subject to their being paid or honored. Discount and collection charges shall be borne by our contractual partner.

3.3 The contractual partner is only allowed to offset with counterclaims that are determined without further legal recourse, undisputed or acknowledged by ourselves. On the other hand, the contractual partner is always only entitled to exercise a right of retention if the partner's counterclaim is based on the same contractual relationship.

3.4 If after concluding the contract, a substantial worsening of our contractual partner's pecuniary circumstances should occur, § 321 of the German Civil Code shall apply to ensure our claims, with the proviso that the existing delay, in particular, shall also be considered a case of recognizable endangerment of our claims with the fulfillment of an obligation to pay us.

#### **4. Delivery period, scope of delivery, place of delivery**

4.1 If we do not deliver on schedule or in due time, the right of withdrawal of our contractual partners shall be determined exclusively by § 323 of the German Civil Code. A withdrawal without setting a period of grace in accordance with § 376 of the German Commercial Code, by contrast, shall be excluded. To be effective, a period of grace set for performance or supplementary performance must be reasonable and made in writing.

4.2 If no delivery deadline and no delivery period is agreed, then we shall deliver within four months after the contract has been concluded. Thereafter, Clause 4.1 above applies.

4.3 If there should be or arise any ambiguities concerning the scope or content of an order, then an agreed delivery period shall not begin until these are completely clarified. The same shall apply in the case of changes to the contract initiated by the purchaser.

4.4 Even if we use an EAN code to encrypt our goods (country of origin, supplier, item number, unit of quantity) and make this known to our contractual partner, this is not part of the agreed scope of delivery. Therefore, we shall assume no liability for any incorrect coding.

4.5 When ordering a quantity of up to 20 units, then production related excess or short deliveries of up to 50% are possible and permissible, whereby the deviation will not exceed 20% in case of an order of exactly 20 units. A deviation of up to 15% is possible for orders between 21 and 100 units; the permissible deviation is 10% for orders of more than 101 units. The total price changes in accordance with the scope of delivery. Additional or other legal consequences do not occur. Partial deliveries are permissible to an extent that is reasonable for our contractual partner. They shall be billed separately.



4.6 We deliver "ex works" for the account and at the risk of the purchaser. When the goods are handed over to the carrier or other person designated to handle the shipment, the risk of accidental loss or accidental deterioration is transferred to the contractual partner, even if we have assumed delivery. In the case of delays of shipment for which our contractual partner is responsible, the risk shall already be transferred to the partner with the notification of readiness for shipment.

4.7 We shall choose the means and channel of transportation. We shall assume no liability for damages and losses during transport. We shall take out transport insurance at the expense and for the account of the contractual partner to cover transport and other damages, charging 0.1% of the value of the goods, 0.5% for overseas transport, plus statutory VAT. The contractual partner must notify the carrier, or the person / company commissioned with shipment of any transport damages in writing and without delay.

4.8 Transport and all other packaging within the meaning of the Packaging Ordinance shall not be taken back; exceptions are pallets. The purchaser is obligated to dispose of the packaging at purchaser's own expense.

4.9 In case of a culpable payment delay by the purchaser, we have the right to request a contract penalty in the amount of 0.2% of the delivered value based on the final invoice for each started day of the delay, however, not more than a total of 10% of the delivered values based on the final invoice. The enforcement of additional legal claims is reserved. The acceptance of a late delivery or service does not represent a waiver of indemnity claims.

## **5. Warranty and notice of defects as well as regress/manufacturer's regress**

5.1 If we have to deliver in accordance with the purchaser's drawings, specifications, samples, etc., the purchaser shall assume the risk of suitability of the intended purpose

5.2 Warranty rights of our contract partner assume that the partner has fulfilled its investigation and reproof obligations in accordance with § 377 HGB in an orderly manner.

5.3. Deficiency claims lapse after twelve months after completed delivery of the goods delivered by us at the purchaser. The legal statutory period of limitation is applicable for claims for damages in case of gross negligence as well as the injury to life, body or health, which is based on an intentional or gross-negligent obligation violation of the user.

5.4 If the delivered goods, despite our diligence, should include a deficiency, which already existed at the time of the passing of the risk, then we will - at our choice - provide a supplementary performance or deliver replacement goods, assumed that a notice of defect is received in time. The opportunity for supplementary performance within an appropriate period must always be provided to us. Regress claims are not affected at all by the above regulation.



5.5 If the supplementary performance fails, then the purchaser can - independent of possible claims for damages - withdraw from the contract or can reduce the compensation.

5.6 Deficiency claims do not exist for only insignificant deviations from the agreed condition, for only insignificant impairment of the usability, for natural abrasion or wear as well as for damages that occur after the passing of the risk due to erroneous or negligent handling, excessive stress, unsuitable operating equipment, deficient construction work, unsuitable building ground or based on special outside influences, which are not assumed based on the contract. If the purchaser or a third party perform improper repairs or changes, then deficiency claims also do not exist for these and for the subsequent consequences.

5.7 Claims of the purchaser for the expenditures required for the supplementary performance, especially transport costs, road tolls, labor or material costs are excluded, if the expenditures increase because the goods delivered by us are transferred to a different location as the branch office of the purchaser, except if the transfer is in accordance with its intended use.

## **6. Reservation of ownership and right of retention**

6.1 We reserve ownership of the delivered goods until all claims arising from the business relationship with our contractual partner are fulfilled. This also applies to all future deliveries, even if we do not explicitly refer to this fact. We have the right to take the purchased goods back if the purchaser acts contrary to the contract.

6.2 The purchaser is obligated to handle the purchased goods with care as long as the purchaser has not obtained ownership of the goods. If maintenance and inspection works must be performed, then the purchaser must perform these in time and on its own costs. If the ownership has not been transferred, then the purchaser must inform us immediately in text form if the delivered object has been seized or otherwise subjected to interferences by third parties. If the third party is not in a position to reimburse the court and out-of-court costs of a lawsuit in accordance with § 771 ZPO to us, then the purchaser is liable to cover the generated shortfall.

6.3 The purchaser has the right for the resale of the goods subject to reservation as part of the normal business activities. The purchaser already now assigns the claims of the buyer to us from the resale of the goods subject to reservation in the amount of the final invoice amount agreed with us (including VAT). This assignment is applicable independent of whether the purchased goods were resold without or with processing. The purchaser is empowered to collect the receivables even after the transfer. Our right to collect the receivables is not affected. However, we agree to not collect the receivable as long as the purchaser meets its payment obligations from the received income, does not delay payment and especially as long as the opening of insolvency proceedings have not been filed or bankruptcy has been declared.



6.4 The processing and manufacture or modification of the purchased goods by the purchaser is always performed on our order and on our account. The remainder of the purchaser for the purchased good is in this case continued for the modified object. If the purchased goods are processed with other objects that we do not own, then we obtain joint ownership for the new object relative to the objective value of our purchased goods to the other processed objects at the time of the processing. The same applies to the case of mixing. If the mixing is performed in such a way that the object of the purchaser must be viewed as the main object, then it is agreed that the purchaser assigns pro-rated co-ownership to us and therefore maintains the sole ownership or the joint ownership for us. To secure our receivables against the purchaser, the purchaser also assigns those receivables to us that the purchaser obtains through the connection of the goods subject to reservation with a property against a third party; we already accept this assignment now.

6.5 We obligate ourselves to release the securities to which we have rights on the request of the purchaser if their value exceeds the receivables to be secured by more than 20%

6.6 We have a comprehensive right of retention based on receivables that are due, for which we have a claim based on the mutual trade business established between us. We have this right of retention across all contracts.

## **7 Place of fulfillment, place of jurisdiction**

7.1 The place of fulfillment is Remscheid.

7.2 Remscheid shall also be the place of jurisdiction for all legal disputes as part of a bill of exchange or check process. We shall also be entitled to litigate at the place of the registered office of our contractual partner.

7.3 Clause 7.2 above shall not apply against contractual partners who are not merchants within the meaning of the German Commercial Code and do not have a general legal venue in the sense of the Code of Civil Procedure in the Federal Republic of Germany.

## **8. Applicable law**

The contractual relationship shall be solely governed by the laws of the Federal Republic of Germany. The United Nations Convention of 11 April 1980 on Contracts for the International Sale of Goods (CISG - "Vienna Sales of Goods Convention") shall not apply.