

# General sales-, delivery-,service- and payment terms

## 1. Miscellaneous

Deliveries and other services are effected exclusively based on the following terms and conditions:

Only the below mentioned general terms and sales conditions are valid. General business terms of the purchaser are only valid when Südpfzwerkstatt gGmbH (hereafter called: contractor) agree to this in written form. This is also applicable when the contractor executes the deliveries and services despite the terms of the purchaser are known as opposing or differing from the terms of the purchaser.

The offers of the contractor are subject to change.

Any orders coming from the purchaser represent a binding offer. If not determined in a different way, the contractor is authorized to accept the contract offer within 3 weeks after receipt. This has to be done in written form. Legal explanations and rules coming from the purchaser which are surrendered AFTER concluding the contract (e. g. deadlines, reminders, letters of resignation) are to be included in written form to become valid.

Any indication of legal rules are only used for clarification. Even without this kind of clarification, the legal rules are applicable as long as not being exclusively excluded or changed according to these conditions.

These terms are valid for the business volume as far as the purchaser is a legal person of the public law or special assets under the aspect of the public laws (§ 14 BGB).

## 2. Prices

Prices of the contractor are to be understood net, plus the currently valid VAT when not agreed in a different way.

Confirmed prices are only applicable for the confirmed quantity.

The basis of the price calculation of the contractor applies to the description of the process and the indication of batch size of the purchaser's contract and a procurement contract. In case the quantities of the purchaser are differing from the execution of the order and a higher effort is required, the contractor has the right to modify the prices and to calculate the additional costs.

## 3. Delivery and service times

Terms of delivery have to be agreed on individually based on the acceptance of the order by the contractor. If not stipulated in a different way, the delivery time is about 4 weeks after conclusion of contract.

Our deliveries are subject to correct and punctual receipt of goods from our suppliers. We as the contractor will inform you as the purchaser immediately about any delays based on outage of the delivery products and will also inform about the estimated new delivery time. In case the delivery is still not possible according to the new delivery time, the purchaser is entitled to either partly or fully withdraw from the contract. In this case, the contractor will reimburse the whole amount in question.

The rights of the purchaser according to §8 and 9 of our general sales conditions and the legal rights of the contractor – especially for excluding the statutory obligation to indemnify (e. g. due to impossibility or unacceptability of the service or/and of the supplementary performance) – remain unaffected.

In case of the delayed supply of materials from the purchaser's side, the delivery and service times will automatically be prolonged depending on the time of the delay.

The delivery quantity can differ by +/- 10% based on deviation of the production. A new delivery for the reduced quantity will be excluded. The base of the final calculation of the delivery volumes are the delivery notes and invoices.

## 4. Despatch and transfer of perils

Deliveries are based on exw on risks of the purchaser. This is also applicable in case the transport is taken care of by the contractor. In case the goods will be collected, transfer of perils takes place when the goods are ready for picking-up.

A transport insurance will be arranged only after agreement and onto expenses of the purchaser.

Goods which are ready for shipment, have to be collected without delay. If the collection does not take place accordingly, the goods are to be sent with a chosen forwarder onto expenses and risks of the purchaser or the goods will be stored and costs are to be borne by the purchaser. In this case, the purchaser has to take over the costs and the delay of the delivery results in a demurrage of 1% of the gross prices for each month of the delay – to a maximum of 10% of the gross prices. The contractor has to right to prove and to invoice the costs if even a higher damage occurs.

## 5. Terms of payment and consequences of delays

The compensation is fully due upon delivery resp. receiving of goods in full extend. The invoice becomes overdue after 10 days expire without any further notice. In case of defects of the products, the purchaser does not reserve the right of retention – unless the delivery is obviously faulty. In this case, the purchaser has the right to refuse the products/services. In such a case, the purchaser has the right to retain a certain amount of the invoice in a reasonable volume to the faults. This is also applicable for the re-performance of the faulty goods /remedy of defects. The purchaser is not entitled to ask for compensation based on faulty products if the settlement of the due invoice is not effected. The ratio has to be reasonable to the value of the faulty goods/services delivered.

## 6. Retention of title

As long as not fully paid, the delivered goods remain property of the contractor.

The purchaser is allowed to process the delivered goods („converting“). This processing is realized for the contractor. If the value of the delivered goods which belong to the purchaser, will be lower than the goods belonging to the contractor, the purchaser acquires a joint ownership of the new goods in ratio of the value (gross invoice value) of the processed delivery item. In case the contractor does not acquire any ownership from the processed goods, both parties agree on a joint ownership of the new goods in ratio of the value of the goods after being processed. This is applicable for the case that the goods are not able to be separated, but are a blend of the delivered product. As soon as the contractor acquires an ownership or joint ownership according to point number 6 (retention of title), the purchaser stores the goods with normal care of a prudent businessman.

In case of selling the delivered goods or the processed goods, the purchaser resigns his ownership from the further selling to the contractor with all ancillary rights without any further notice. This assignment includes any possible balance claim. The assignment only amounts to a maximum sum which corresponds to the invoiced sum. These debt securities are to be dealt with priority.

In case the purchaser integrates the delivered goods or the new products into estates, he resigns without any further notice also his claims - which he is entitled to obtain - up to the amount of the goods being invoiced before.

Until cancelled, the purchaser is entitled to claim the resigned demands from the contractor according to point number 6 (retention of title). The purchaser will transfer the resigned amount up to the volume of the secured demands without delay to the contractor. In cases of entitled interest – especially in case of overdue payments, stop of payment, opening insolvency proceedings, act of protest or reasonable assumptions of non-payments which lead to inability to pay, the collection procedure will be withdrawn from the contractor to the purchaser. Furthermore, the contractor may disclose the assignment of security after a reasonable period of time with a notification prior to this legal act and can ask for an assignment of security and can also ask for disclosure of the securities from the purchaser.

In case of a substantiation of a proved interest, the purchaser has to present required information about these rights and has to hand out the required documentation based on this.

During the existence of the retention of title, the purchaser is not entitled to start any bailment or transfer of securities. In case of bailments, empressment or other regulations or invention of a third party, the purchaser has to notify the contractor. Resale of the delivered goods or the new goods is only allowed to resellers in a regular business situation and can only take place to ensure that the payment of the counter value is realized. The purchaser has to agree with the new acceptor that the acceptor gains property only after this payment.

As far as the realized values of all securities which are entitled to the contractor, exceed the secured demands by more than 10%, the contractor may release the corresponding share of the securities if this is the purchaser's wish. It is presumed that the conditions of this are reached, when the estimated value of the securities which the contractor is entitled to get, either reach or even exceed 150% of the value of secured demands. The contractor has the right to choose between different security rights.

In case of violations of duty from the purchaser's side – especially in case of payment delays – the contractor is entitled without further notice – to ask for the return of the delivered goods resp. the processed goods and / or to withdraw from the contract giving a deadline if required. When asking for the return of the goods, this is no case of withdrawal of the contract of the contractor – if not otherwise stipulated.

## 7. Defects

Claims in case of defects are only applicable for severe variations of the quality of the goods and in case of outage of the goods.

The lack of assured product features is part of justified defects. However, only confirmed specifications being fixed in written form by the contractor are part of assured product features. Samples supplied by the contractor which are the base of the order only represent an average quality of the goods. Standard tolerances are allowed. The same is applicable for delivery according to the catalogue, brochures or according to our indications.

The choice between rectification of defects or replacement is allowed to the contractor. This has to be stipulated in written form and the contractor has to be granted an adequate time line. In case the delivered product has to be corrected, a failure is only accepted after 2 failed attempts. If the after-treatment fails, the purchaser has the right to detract or – when it is not a construction work which is the reason for this complaint – to withdraw from the contract if wanted. The legal case of expendability stays unaffected. The use of §§478, 479 BGB (right of recourse) stays unaffected. The same is applicable for the right of the purchaser to ask for compensations according to fig 8.

Any additions efforts for the supplementary performance are to be borne by the purchaser in case of higher costs for deliveries to another location than the branch of the contractor. This is not applicable in case the delivery corresponds to its intended use. The use of §478 BGB (recourse action) remains unaffected. In case of unjustified claims to test the quality, the purchaser has to replace all costs to the contractor.

## 8. Liability

a) If not otherwise stipulated in the general sales terms including the following regulations, the contractor is liable for any violation of contract and duties which are non-contractual.

b) The contractor is responsible for any kind of compensations – which reason ever occurs. This is based on the leverage in case of intention and culpable negligence. In case of standard negligence – according to the legal corporate veil, e. g. diligence for own processes, standard neglect of duty - the contractor is responsible only  
aa) for damages resulting from injury of life, body and health  
bb) for damages which result from a violation of the fundamental contractual obligations (obligation which is based on the contract to fulfill it ordinarily and which is the trustful agreement between the contractual parties). In this case, the damage which may occur is limited to its forecastable and typical manner of damage.

c) Which result from a violation of duties (see previous passage) in the limitations of liabilities also in the event of breach of duty by resp. in favor of persons which the contractor has to guarantee according to the legal standards. They are not applicable if there is a case of fraudulent concealment from the contractor or if the warranty for the specifications of the goods are taken over by the contractor. This also relates to claims resulting from the standard product liability act.

d) The material disappears unintentionally or worsens. In those case, the purchaser takes over the risk according to § 644 BGB.

In case the purchaser provides any materials to the contractor which hinder a further processing or which even make the execution of the order impossible, the contractor has to right to treat the material on a competent way according to § 645 BGB and is entitled to ask for a compensation of the additional costs.

## 9. Withdrawal of contract

The purchaser is only entitled to withdraw from the contract if the contract is liable for this violation of duty. (In case of defects the legal terms for a withdrawal of contract are to be used instead of this) The purchaser has to declare within a suitable deadline to the contractor if he would like to withdraw from the contract or if he insists on executing to order properly.

## 10. Limitation period of work performance /new things

In contrast to §438, passage 1, number 3 BGB the general limitation period for claims resulting from defects of material and defects of title are 1 year starting from the delivery. As far as an approval is agreed on, the limitation period starts from its approval.

In case the goods are part of a building or an thing, which is usually used for buildings (construction material), the limitation period is according to the legal regulation 5 years from the date of delivery (§438 passage 1, number 2 BGB) This does not affect further legal and special regulations for the limitation period (especially § 428, passage 1, number 1, passage 3, §§ 444, 445b BGB)

The preceding limitation periods of sale of goods act are also applicable for contractual and non-contractual claims for damages of the purchaser which are based on a defect of goods – unless the use of the regular legal limitation period (§§ 195, 199 BGB) would lead to a shorter

period of limitation. Claims for this and also the product liability will expire only according to the legal limitation periods. (§8 b sentence 1 and aa)

#### **11. Limitation period for second hand goods**

Claims and rights resulting from defects of deliveries – whatever the legal reason is – are excluded. The exclusion resp. Limitation period according to passage 1 are also applicable for all claims against the contractor which are in relation to the defect – irrespective of the legal basis of the claim.

The exclusion and the limitation periods according to passage 1 and 2 are the following:

- a) They are not applicable for the case of intentional harm or fraudulent concealment of a defect or if the contractor has taken over a warranty for the nature of the delivered goods.
- b) Limitation periods are valid for claims and for violations of duty which are not negligent or for cases where the delivery is faulty or the service is insufficient, for cases of culpable breach of contractual duties which may cause culpable injuries to life, body or health or for claims in connection with product liability. The exclusion resp. the limitation periods for claims are also applicable for efforts which are in vain.

The limitation period begins for all claims with the delivery of the goods/services. When not determined differently, these regulations remain valid after the limitation period, suspension of statute of limitations and a new start of deadlines.

As long as claims of any kind against the contractor exist, which are not related to a defect, they are excluded.

A modification of the burden of proof to the disadvantage of the purchaser is not connected to the before mentioned regulations.

#### **12. Act of transfer, charging, partial deliveries**

Claims based on this contract can only be resigned by the purchaser upon approval of the contractor.

The purchaser can only settle with those claims which are uncontested and legally binding.

Partial deliveries are allowed as far as reasonable to the purchaser.

#### **13. Violations of 3rd party**

In case deliveries or services according to drawings or other sources of data from the purchaser are surrendered and rights of 3<sup>rd</sup> parties are violated against –especially property rights, the purchaser releases the contractor from all claims deriving from this – unless the contractor is responsible for the creation of these claims by means of intention or culpable negligence. For the distribution of the damages between purchaser and contractor see § 840 BGB resp. § 264 BGB.

#### **14. Patterns, tools and samples**

Tools, forms and similar devices remain property of the contractor – even when the purchaser compensates a share for their use.

The contractor is liable for any compensation – irrespective of legal basis – in the content of law of negligence in case of intent or culpable negligence. In a case of ordinary negligence, the contractor is liable, subject to the legal restrictions of liability (e.g. diligence in own businesses, irrelevant breach of duty) only for unavoidable damages.

Samples being supplied by the contractor are invoiced if not stipulated differently.

#### **15. Storage of data**

The contractor stores the data which are required for the contractual execution of the order based on the federal law for data protection.

The contractor ensures that the data will exclusively be used only in the content.

#### **16. Place of execution and place of jurisdiction**

Place of execution for deliveries and payments is the registered office of the contractor.

For all legal disputes deriving from this contract, legal actions will have to take place in front of the district court of 76829 Landau. The contractor is also entitled to take action at the headquarters of the purchaser.

For any privity of contract of the parties, the general laws of Federal Republic of Germany excluding international fundamental rights, especially the UN convention on contracts for the international sales of goods are applicable.

#### **17. Miscellaneous**

Note according to §36 VSBG – Südpfalzwerkstatt gGmbH is not willing to take part in a dispute resolution in front of a consumers' arbitration court.