

General Terms and Conditions of sale, delivery and payment and other services resulting from contractual relationships



Theo-Lorch
Werkstätten gGmbH

Art. 1 Validity of the terms and conditions

(1) All deliveries, services and offers by the Theo-Lorch-Werkstätten gGmbH are made exclusively on the basis of these general terms and conditions. Consequently they also apply to any future business relations even if not expressly agreed again. At the latest, when accepting goods or services, these terms and conditions shall be considered accepted. Any counter-acknowledgements of the contract partner referring to his terms and conditions or purchasing conditions are herewith contradicted.

(2) Exceptions to these terms and conditions shall be effective only if approved by us in writing.

(3) These terms and conditions shall only apply vis-à-vis firms, corporate bodies or special funds under public law.

Art. 2 Offer and conclusion of contract

(1) Our offers are without engagement and subject to confirmation. Any declarations of acceptance and orders as well as any other declarations of intent concerning legal transactions require our written confirmation before becoming legally effective. The same applies to any supplements, amendments, or collateral agreements.

(2) Drawings, illustrations, dimensions, weights or any other data shall be binding only if expressly agreed upon in writing.

(3) Employees are not authorised to make collateral agreements or to make any promises or guarantees extending beyond the contents of the written contract.

Art. 3 Prices

Unless otherwise agreed upon in writing in special cases, we consider the prices quoted in our offers binding for a period of 60 days after the date of the offer. Decisive shall be the prices plus the applicable legal turnover tax confirmed in our acknowledgement of order. Additional deliveries and services shall be invoiced separately.

Art. 4 Delivery and performance times

(1) Delivery and/or performance times shall be binding only if expressly declared to be binding by us in writing.

(2) Delays in delivery and performance due to Acts of God or strike or due to events which substantially complicate the delivery or render it impossible, e.g. directions on the part of the authorities, even if they occur to our suppliers, their sub-suppliers or third parties whom we use in order to fulfill our obligations, shall not be answered for by us even in the case of bindingly agreed times. They shall give us the right to postpone the delivery and/or performance for the time of the impediment plus a reasonable starting time or to withdraw fully or partially from the contract with a view to the not yet fulfilled portion.

(3) We shall have the right to make partial deliveries at any time unless in a particular case we are advised in advance that the contract partner would be unduly impeded by such partial deliveries.

Art. 5 Transfer of risk

The risk shall be transferred to the contract partner as soon as the consignment is handed out to the person/company responsible for the transport, or the consignment has left our warehouse or that of a third party acting on our behalf for shipment. If the dispatch becomes impossible through no fault of ours the risk shall be transferred upon the contract partner at the moment he is notified of the readiness for shipment, if he refuses to collect the goods after having been asked to collect them.

Art. 6 Warranty for defects

(1) The term of limitation shall be 12 months after the transfer of risk.

(2) If our instructions of operation, maintenance or any other instructions are not observed, if products are modified, parts are replaced or materials used which are not in conformity with the original specifications, any warranty for defects shall be excluded, unless the contract partner proves that the defect occurred was not due to such causes.

(3) The contract partner shall be obliged to inform us in writing of any defects immediately, at the latest, however, within one week. Defects which cannot be detected within this time even with careful inspection shall be reported to us in writing immediately upon their detection. We do not assume any liability for defects which are reported after the expiration of the above mentioned terms.

(4) In the case of a notice of defect, the defective part or item shall be sent to us for repair. Should it turn out that there was indeed no defect or that it is due to a reason according to Art. 6, paragraph 2 of these general terms and conditions, the contract partner shall bear all costs related with the shipment, examination and repair; the same shall apply to defects reported to us too late (Section 6, paragraph 3, sentences 2 and 3).

(5) A warranty for normal wear and tear is excluded in any case.

Art. 7 Reservation of title

(1) The goods shall remain our property until all our open claims against our contract partner will be settled.

(2) If the contract partner behaves contrary to the terms of the contract - especially in the case of default of payment - we shall have the right to take back the goods under reservation of title or, if necessary, demand the assignment of the contract partner's right to restitution against third parties. The taking back as well as the pledging of the goods under reservation of title by us shall not constitute a withdrawal from the contract - unless the consumer credit law is applicable.

(3) The processing or transformation of the goods under reservation of title is made for us as manufacturer. If the goods under reservation of title are processed, combined or mixed with items which are not our property we acquire a co-ownership in the ratio of our goods to the other goods.

(4) Our contract partner shall have the right to sell the goods under reservation of title in the ordinary way of business; he shall, however, assign to us already now any claims in the amount of unsettled claims. Our contract partner shall be entitled to collect the claims. Our authority to collect the claims shall not be affected by this.

Art. 8 Payment, right of detention

(1) Our invoices are payable within 14 days after the date of the invoice without any discount.

(2) A payment shall be recognised only when the amount paid is at our disposal. In the case of the acceptance of cashless payment by us likewise only the unconditional crediting to our account and/or the possibility of disposing of the amount due shall be considered as fulfilment.

(3) The exercise of any right of detention or any setoff against the payment agreed shall be excluded; this does, however, not apply to setoffs as far as finally determined, uncontested counterclaims, or accordingly, counterclaims ripe for decision are concerned.

Art. 9 Changes of execution

We reserve the right to make changes in the work process at any time. On the other hand we shall not be obliged to change any already delivered products accordingly.

Art. 10 Limitation of liability

We shall be liable only for damages caused intentionally or by gross negligence unless there is a substantial violation of the terms of the contract. In the case of a violation of obligations under this contract our liability shall be limited to foreseeable damage typical for the contract. The same shall be applicable to acts of our vicarious agents.

Art. 11 Place of jurisdiction, written form

(1) The place of jurisdiction for any litigations arising from this contract relation and/or any legal relations between us and our contract partners shall be exclusively Ludwigsburg regardless which type of action or process is concerned or which item is concerned by the action.

(2) Any changes or amendments of these terms and conditions and/or the contractual relation must be made in writing; the same shall also apply to the cancellation of the written form clause.

Art. 12 Inclusion of third persons

As far as we are entitled to commission third persons to fulfill our contractual obligations, the provisions of our general terms and conditions shall apply analogously also to their activity; the incrimination of third persons due to the application of these terms and conditions, however, shall be excluded.

Art. 13 Saving clause

If any provision(s) of this contract should be ineffective, or should a gap become apparent, this shall not affect the validity of the remaining provisions. The ineffective provision of the contract shall be replaced and/or the gap shall be filled with a valid substitute ruling which answers and/or comes as close as possible to the parties' intent manifested by this contract, the economic purpose of the provision dropped and the whole contract.

Art. 14 Additional conditions for work contracts (commissioned work)

(1) Unless otherwise agreed upon all items required for a contract shall be supplied by the orderer free our warehouse. The transport risk shall be borne by the orderer.

(2) If any materials supplied by the orderer become unusable in an amount exceeding the acceptable or agreed amount, by circumstances to be answered for by us, we shall process the materials additionally supplied by the orderer and replace the additional cost of the material upon proof. Any further claims shall be excluded.

(3) We do not assume any liability for defective performance by us due to faults or defects of materials, parts, devices, tools, or machines provided by the orderer. We shall have the right to invoice any additional processing expenses accrued to us due to such faults or defects.

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