

1.1. General Terms of Business

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Sale, delivery and payment terms

§ 1 Preamble

(1) These conditions shall form the basis of all quotes, agreements, supplies and services. They shall also apply to work and building contracts unless the parties have agreed that part B of the German Standard Building Contract Terms (*VOB/B - Verdingungsordnung für Bauleistungen*) shall apply to such work and unless the mandatory provisions of the German Civil Code (*Bürgerliches Gesetzbuch*), applicable to work contracts, take precedence.

(2) The version of Part B DIN 1961 of the Standard Building Contract Terms in force on the date of the conclusion of the contract shall automatically apply to the provision of all building services and assembly work provided that the party who issues the order is actively engaged in the building trade.

(3) Should the order be issued by a consumer then Part B DIN 1961 of the Standard Building Contract Terms shall become part of the contract upon the consumer being notified of its terms by being handed a copy of the relevant text prior to the conclusion of the contract. The consumer shall provide written confirmation that he has been handed the relevant text.

(4) Any contractual conditions of the customer to the contrary shall be invalid.

§ 2 Quotes and prices

(1) All quotes are subject to alteration pending the acceptance of an order unless they have been guaranteed for a fixed period. Should the customer's order deviate from the quote/estimate provided by the contractor, no contractual relationship shall exist in the absence of the contractor's confirmation.

(2) The terms of the contract concluded by the parties shall apply to any changes or additional work beyond the scope of the original agreement. The contractor reserves the right to adjust the contract price should costs rise in consequence of wage increases (in collective wage rates etc.) or increases in the price of materials. Any such price increase shall be notified by means of an amended quotation.

(3) Should the requisite volume of work or materials change due to the execution of the order, the customer shall be charged for any surplus or credited for any shortfall.

(4) Quotations, drawings and other documentation issued by the contractor shall be confidential. The contractor reserves its copyright in any intellectual property created in consequence of its work.

(5) Repairs shall be charged on a time-and-cost basis (hourly wage, material costs). Travelling time shall be treated as working time and shall be charged according to hourly wage rates. Travelling costs shall be charged as they accrue.

§ 3 Official and other permits

The customer shall obtain any official or other permits which it may become necessary to acquire provided that the terms of the order do not require the contractor to do so (as in the case of a project management order).

§ 4 Material defects

(1) Complaints with regard to material defects concerning work other than building work must be made under §§ 633 seq. of the German Civil Code unless sales law is applicable under § 651 thereof.

(2) Complaints with regard to material defects concerning building work must be made under § 13 Part B of the German Standard Building Contract Terms; or under §§ 633 seq. of the Civil Code where a building contract concluded with a consumer does not effectively incorporate Part B of the German Standard Building Contract Terms.

(3) The provisions of § 437 seqq. of the Civil Code apply to a contract of sale so that the enforcement of a claim for damages under §§ 440, 280, 281, 283, 311a and 284 of the Civil Code shall be excluded unless the defect or damage was caused by the contractor's gross negligence or intentional conduct.

Rights of warranty shall not apply to second-hand goods sold by a commercial vendor to a commercial purchaser unless the vendor intentionally conceals the defect or has provided a warranty with regard to the quality of the goods. A consumer may claim for defective second-hand goods purchased under a contract of sale within one year of their delivery.

(4) In the case of business-to-business transactions, written complaints of perceptible defects must be notified immediately after the delivery of the goods and/or inspection of the work (§ 377 of the German Commercial Code (*Handelsgesetzbuch*) or, in the case of consumer transactions, within two weeks thereafter. The right to claim for perceptible defects shall lapse after the expiry of this period.

§ 5 Remuneration, payments on account

(1) In the absence of a contrary agreement, the remuneration shall fall due without any discount immediately upon the presentation of the contractor's invoice following the completion of the contractual work and its delivery/acceptance.

(2) The contractor may demand on application (by interim invoice) payments on account equivalent to the value of the proven contractual work and inclusive of sales tax. Evidence of completed work shall be provided by a checkable itemised schedule which shall be the means by which the customer must make a quick and secure assessment of the work. Work in this context shall also include components which have been manufactured or provided for the project by the contractor, and materials or components delivered to the site provided that at the discretion of the customer their ownership was transferred to the customer or some corresponding security in respect thereof was granted.

(3) The customer may demand the remedy of defects, and therefore in the case of building work, he may, after conducting an inspection, withhold the payment of a corresponding part of the remuneration, provided that the sum withheld does not exceed three times the necessary cost of remedying the defect.

§ 6 Cancellation by the customer, flat-rate compensation

Should the customer cancel before the execution of the work contract, the contractor may demand flat-rate compensation equal to 10% of the value of the order. The customer may produce evidence that the contractor's losses are less.

§ 7 Technical clauses

(1) The customer shall be responsible for any additional work which is required in order that the agreed services might be performed, or for the purpose of supplementing and completing the agreed services, where such work is outside the agreed scope of work for which the contractor is liable. The customer shall pay for all work specified as additional work (*Nebenleistungen*) under Part C DIN of the German Standard Building Contract Terms, in accordance with clause 2 (2) thereof, in case the customer orders such work.

(2) The customer is made aware that he is responsible for the maintenance of work and components that require maintenance. This particularly applies to elastic joint seals, and to electrical, electronic and machine parts or installations, and to component parts, fittings, movable installations, and exterior painting (e.g. windows) which will subsequently require processing depending on the type of varnish or glazing used and depending on atmospheric exposure. Maintenance work shall not fall within the scope of the order unless expressly agreed or unless a maintenance contract has been concluded. The failure to undertake maintenance work will reduce the lifetime and impair the functionality of the components without giving rise to a claim for breach of warranty against the contractor.

(3) The contractor reserves the right to make reasonable minor deviations to the dimensions and execution of the work, particularly in the case of supplementary orders, provided that these are customary and coincide with the nature of the work.

§ 8 Method of payment

Payment by bill of exchange may only be made by special agreement. Bank drafts and cheques will only be accepted as methods of payment and not in substitution for payment. The contractor shall be liable for bill taxes and charges.

§ 9 Set-off

The customer may not set-off its own claims against sums due under the contract unless such claims have been judicially upheld without the right of appeal or are undisputed.

§ 10 Reservation of title

(1) The contractor shall reserve its title to the goods supplied and/or work product until it has received all the payments due under the contract. The contractor may repossess the goods and/or work product should the customer breach its contractual obligations, particularly by delaying payment; the customer is obliged to surrender such goods or products. The repossession of the goods and/or the work product shall not imply the contractor's withdrawal from the contract unless the provisions of the German Consumer Credit Act (*Verbraucherkreditgesetz*) apply, or unless the contractor issues express written notification of his withdrawal from the contract. Any pledge of the goods and/or work product shall imply withdrawal from the contract. The customer must always provide the contractor with immediate written notification of any pledges or other third party intervention so that the contractor may file an objection in respect thereof under § 771 of the German Code of Civil Procedure (*ZPO- Zivilprozessordnung*). Should the third party be unable to reimburse the contractor for the judicial and extra-judicial costs of an objection under § 771 ZPO, the customer shall be liable to the contractor for any shortfall.

(2) The customer may resell the goods supplied and/or work product in the ordinary course of business; he shall, however, assign to the contractor the right to collect a sum equal to the total (including VAT) of all outstanding invoices payable by its own customers or any other third party in consequence of such a resale, regardless of whether the object has been resold, with or without additional workmanship. The customer is entitled to collect any sums owed under these invoices after the assignment. The contractor's right of collection remains unaffected; however, the contractor undertakes not to exercise this right of collection for so long as the customer properly discharges its payment obligations and does not fall into arrears. If the customer defaults, the contractor may demand that the customer provide him with details of those invoices in respect of which the right of collection has been assigned and with details of the respective debtors, plus any other information which may be necessary for the collection of the debts, and any associated documentation; the contractor may also demand that the customer notify its debtors (third parties) of the assignment.

(3) Should the customer process or transform the delivered object, he/she will do so on behalf of the contractor. Should the object be processed in combination with another object which does not belong to the contractor, the contractor shall acquire a share in the ownership of the new object, corresponding to the proportion which the value of the object supplied by it bears to the value of the other objects at the time when they were processed. Otherwise the same rules applicable to property subject to a reservation of title shall also apply to the object created through the processing of the delivered object.

(4) Should the goods and/or work product be inextricably combined or mixed with other objects not belonging to the contractor, the contractor shall acquire a share in the co-ownership of the new property corresponding to the proportion which the value of the goods and/or the work product which it supplied bears to the other combined or mixed objects at the time of their combination or mixture. Should the combination or the mixture occur in such a manner that the customer's property is regarded as the principal object, the customer shall transfer a pro-rata share in the ownership of the object to the contractor. The customer shall keep safe custody of any object solely or jointly owned by the contractor.

(5) The customer shall also assign to the contractor any right of security in respect of claims made against himself, which he may be entitled to enforce against a third party due to some connection between the goods and/or work product and the plot of land.

(6) The contractor undertakes upon the purchaser's request to release any securities which have accrued to him insofar as their value exceeds the value of any secured claim which remains unpaid by more than 20%.

§ 11 Place of jurisdiction

In case both parties are merchants (*Kaufleute*), the exclusive place of jurisdiction shall be the location of the contractor's registered office.