

# **General Terms and Conditions of Business**

of **Certis Europe B.V.**,

Germany branch

## **1. Area of application**

- 1.1. The following Terms and Conditions form the basis of all delivery transactions, agreements and offers in respect of commercial business transactions, as stated in their respective valid versions, including if we do not expressly refer to these in individual cases. They apply, as stated in their respective valid versions, exclusively to the relationship entered into with entrepreneurial customers (Section 14, BGB (German Civil Code)), legal entities under public law and special funds under public law.
- 1.2. Contradictory general terms and conditions of business of the customer shall only become an element of the contract in the event of our consent.
- 1.3. Individual agreements entered into with the Buyer shall have precedence over these General Terms and Conditions of Business. A written agreement is authoritative in that respect. The customer reserves the right to provide counter-evidence of a verbal agreement to the contrary.
- 1.4. These Terms and Conditions apply, in particular, to the sale and/or delivery of movable items ("Goods"). Whether we manufacture the goods ourselves or purchase them from third parties (Sections 433, 650 BGB) is not decisive.
- 1.5. Statements and notifications on the part of the Buyer with legal effect in relation to contracts entered into in accordance with the regime of these Terms and Conditions (inter alia notification of defects, statement of withdrawal or of a claim for reduction of the purchase price as well as setting deadlines) are to be forwarded in writing.
- 1.6. If these Terms and Conditions refer to the application and validity of statutory requirements, this applies by way of clarification. The statutory requirements apply unless they are effectively excluded or amended by way of these Terms and Conditions.

## **2. Bringing about contracts**

- 2.1. An order for goods placed by the Buyer is a binding offer to enter into a contract with us. Insofar as the customer's order does not contain content to the contrary, we may accept contract offers within 14 days of receipt.
- 2.2. We shall state acceptance either in writing (as a rule by way of the order confirmation) or by delivering the goods to the customer).
- 2.3. Our information in customer catalogues, technical documentation (e.g. drawings, plans, computations, calculations to references to DIN standards), other product descriptions or documents, including in electronic form, do not constitute offers capable of acceptance.

## **3. Delivery**

- 3.1. The delivery period shall either be agreed individually with the customer or, in the absence of such an agreement, shall be specified by us upon acceptance of the order.
- 3.2. The statutory provisions shall apply in the event of default in delivery. A reminder from the Buyer is, in any case, a prerequisite for claims arising from default in delivery. This does not affect our customer's rights in accordance with 8 of these Terms and Conditions and our statutory rights, in particular in the event of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or subsequent performance).
- 3.3. If binding delivery periods agreed with the customer (3.1, 1st case) cannot be met for reasons for which we are not responsible (in particular in the case of non-availability of the service), we shall make information available to the customer without delay, where possible, by way of simultaneous notification of the expected new delivery period. We reserve the right to withdraw from the contract in full or in part if our delivery is also not available within the additional period. The customer shall be refunded without delay in the event of having already made advance payment. Non-availability of the service within the meaning of this provision is, in

particular, the non-timely self-delivery by our supplier provided we have entered into a congruent covering transaction and neither we nor our supplier are at fault or we do not undertake to procure in the individual case.

#### **4. Passing of risk, default in acceptance, acceptance**

- 4.1. We shall ship the object of sale to the Buyer's registered office by order of the Buyer. Hamburg is deemed the place of performance. If no agreement to the contrary is entered into in this respect, we may determine the type of shipment (in particular transport company, shipping route or packaging). The risk of accidental loss or accidental deterioration of the object of sale shall pass to the Buyer upon entering into the contract of sale, in the case of shipment upon handover to the person entrusted with the transport.
- 4.2. If the Buyer defaults in acceptance, if the Buyer fails to collaborate or if the delivery is delayed for other reasons for which the Buyer is responsible, we shall be entitled to demand compensation for the damage we sustain as a result, including any additional expenses (e.g. storage costs). For this purpose, the parties agree on flat rate compensation in the sum of 0.1% of the total net order amount for each working day. The calculation shall be made at the end of the delivery period. If no such period has been agreed, notification that the goods are ready for dispatch shall be authoritative.
- 4.3. This shall not affect proof of greater damage or our statutory claims (in particular compensation for additional expenses, reasonable compensation and termination). However, the flat rate is to be counted towards these claims. Our customer may furnish us with proof that no damage or only significantly less damage than that agreed by way of the flat rate has been sustained. Our claim shall be reduced by the corresponding proven amount.

#### **5. Prices, payment**

- 5.1. The agreed prices (2.2) shall apply upon acceptance. Unless otherwise agreed, our prices valid at the time of entering into the contract and shall apply ex warehouse, plus VAT in each case.

- 5.2. We state the transport costs ex warehouse and the premiums of any transport insurance requested by the customer separately. The customer shall bear any customs duties, taxes and fees as well as other public charges.
- 5.3. As a general rule, our payment claims are payable within expiry of 10 working days after delivery (4.1). The date of receipt of payment by us is authoritative. Any variation from this shall only apply if it has been agreed to the contrary as part of the order and acceptance (2.1 and 2.2). In individual cases, we reserve the right to make full or partial delivery subject to advance payment, of which we shall inform the customer at the latest with the order confirmation.
- 5.4. If the customer's payment deadline expires, the customer shall be required to pay us the statutory default interest rate applicable at the time. We reserve the right to claim for further damage caused by default. This does not affect our claim to the commercial interest on the due date (Section 353 HGB (German Commercial Code)).
- 5.5. The customer may assert setting-off or retention rights if the customer's claim against us has become res judicata or is undisputed. If our delivery is faulty, this shall not affect the Buyer's rights to the contrary, above all 7.6, sentence 2.
- 5.6. If, after entering into a contract with the customer, circumstances arise as a result of which our claim to the purchase price is jeopardised by the customer's inability to pay (e.g. as a result of an application for the institution of insolvency proceedings), we shall be entitled to refuse performance in accordance with the statutory provisions and, where necessary after setting a deadline, withdraw from the contract (Section 321 BGB).

## **6. Reservation of title**

- 6.1. We reserve the title to the goods delivered by us until payment in full of all our present and future claims arising from the purchase contract and the ongoing business relationship with the customer (secured claims).
- 6.2. If we deliver subject to reservation of title, the goods may not be pledged to third parties or assigned as security before payment in full of the secured claims (6.1). The customer undertakes to inform us without delay in writing of any application for

the institution of insolvency proceedings or other access by third parties (e.g. seizures) in respect of the goods delivered subject to reservation of title.

6.3. We may withdraw from the contract if the customer acts in breach of contract, in particular in the event of non-payment of the due purchase price in accordance with the statutory provisions. Furthermore, we are entitled to demand the return of the goods delivered subject to reservation of title. If we demand the return of the goods, this shall not simultaneously constitute a declaration of withdrawal from the contract. The demand for return may be made subject to withdrawal. The rights may be exercised by us in the event of non-payment of a due purchase price if we have previously unsuccessfully set the customer a reasonable deadline for performance, unless the setting of a deadline is dispensable in accordance with the statutory provisions.

6.4. Until revoked in accordance with letter c below, our customer may sell and/or process the goods delivered subject to reservation of title in the ordinary course of business, whereby the following provisions shall apply

**a.**

Our reservation of title also extends to the products resulting from the mixing, processing or combination of our goods at their full value, whereby we shall be deemed the manufacturer. If in this case the ownership rights of third parties remain, we shall acquire co-ownership in the proportion of the invoice values to the processed, mixed or combined goods. With regard to the resulting product, the regulations apply accordingly as they apply to the goods delivered under reservation of title.

**b.**

The customer hereby assigns to us by way of security the claims against third parties arising from the resale of the goods or the product in full or in the amount of our co-ownership share in accordance with letter a. We accept the assignment. The customer's obligations provided for in 6.2 also apply in respect of these assigned claims.

**c.**

The customer is authorised to collect the claim in addition to us. We shall not collect the claim if the customer honours its payment obligations to us, it is not lacking in its ability to pay and we only assert our reservation of title by exercising the rights in accordance with 6.3. If we do so, the customer shall inform us of the assigned

claims and their debtors, provide us with all information necessary for collection, hand over the relevant documents and identify the debtors (third parties). Furthermore, we are entitled to withdraw the authorisation granted to the customer to sell and process the goods delivered subject to reservation of title.

**d.**

If the realisable value of the securities provided to us is more than 110% of our claims, at the customer's request we shall release the securities made available to us at our discretion.

## **7. Claims arising from defects**

- 7.1. The customer shall have the statutory rights in the event of material defects and defects of title, unless nothing is provided for in that respect below. In any case, this does not affect special statutory provisions in the case of final delivery of unprocessed goods to a consumer, including if the consumer has processed these goods further (supplier recourse in accordance with Section 478 BGB). Claims arising from such supplier recourse shall not apply if faulty goods have been further processed by the customer or another company, e.g. by installation in another product.
- 7.2. The quality agreement is authoritative for assessing the existence of a defect. Our product descriptions and manufacturer's specifications, which are the subject matter of the individual contract or which were publicly announced by us (in print brochures or on our website) at the time of entering into the contract, shall be taken into consideration.
- 7.3. If a quality has not been expressly agreed, the statutory definition of a defect shall apply (Section 434 I 2 and 3, BGB). We do not assume any responsibility for public statements by third parties (advertising statements) to which the customer did not draw our attention as being decisive for the purchase as part of initiating the contract.
- 7.4. We shall not be liable if the customer was aware of defects at the time of entering into the contract or was not aware of them due to gross negligence (Section 442 BGB). Furthermore, honouring the Buyer's obligations to give notice of defects and examine the goods (Sections 377, 381 HGB) is a prerequisite for exercising claims

for defects. In the case of deliveries intended for further processing, the customer must, in any case, perform the inspection immediately before processing. Written notice of defect without delay shall be required if a defect is already apparent upon delivery, inspection or at a later date. Obvious defects must, in any case, be reported within five working days of delivery. Defects not identifiable during the inspection must also be reported in writing within five working days of identification. If the Buyer fails to properly honour its obligations to inspect and/or provide notification of defects, our liability shall be excluded for the defect for which notification is not provided, is not provided in good time or not properly in accordance with the statutory requirements.

- 7.5. If the delivered item is faulty, we shall have the choice of subsequent performance by rectifying the defect (rectification) or delivery of a fault-free item (replacement). If we have a right to refuse subsequent performance in accordance with the statutory requirement, we may exercise this right.
- 7.6. If the customer is in arrears with payment of the due purchase price, we may make subsequent performance conditional on payment in full of the purchase price. This does not rule out the customer retaining an appropriate part of the purchase price in relation to the defect.
- 7.7. The customer shall hand over the rejected goods to us for inspection purposes. If we exercise our right to replacement delivery, the customer shall return the faulty item in accordance with the statutory requirements.
- 7.8. We shall bear or reimburse the expenses required for the purpose of inspection and subsequent performance, including transport, travel and material costs, in accordance with the statutory requirements provided the customer's notification of defects proves to be justified. Otherwise, we shall demand reimbursement of the reasonable costs incurred by the customer in conjunction with its notification of defects (in particular inspection and transport costs). We shall not assert this claim if our customer was unable to identify the fault.
- 7.9. If the subsequent performance has failed or if we have permitted a reasonable deadline set by the customer to expire in vain or if the setting of a deadline by the customer is dispensable, the customer may withdraw from the purchase contract or reduce the purchase price. This shall not apply in the case of an insignificant defect.

7.10. The customer's claims for damages and/or reimbursement of expenses in vain shall apply in accordance with the following regulation in accordance with 8. Further claims are excluded.

## **8. Liability**

8.1. We shall be liable in accordance with the statutory provisions in the event of a breach of contractual and statutory obligations.

8.2. The customer may claim damages, irrespective on whichever legal grounds the claims are based, if we act intentionally or gross negligently and such action is the cause of the damage. In the event of basic negligence, we shall be liable, subject to limitations of liability of a statutory nature (e.g. care in own matters; insignificant breaches of duty), only

- For damages resulting from physical injury, loss of life or detrimental effects on health,
- For damages due to the breach of an essential contractual obligation (obligations, the honouring of which is a prerequisite for the proper performance of the contract and on the compliance with which the customer regularly relies and may rely);

In this case, our liability is limited to compensation for the damage typically foreseeable at the time of entering into the contract.

8.3. The limitations resulting from 8.2 also apply to third parties and in the event of breaches of duty by such persons (also in their favour) for whose fault we are responsible. The restrictions do not apply if a defect has been fraudulently concealed or if we have assumed a guarantee for a particular quality of the goods. Limitations are similarly excluded in the event of applicability of the German Product Liability Act.

8.4. If a breach of duty does not consist of a defect in the goods, the Buyer may only withdraw from the contract or terminate the contract if we are responsible for the defect. The Buyer's unqualified right of termination (in particular according to Sections 650, 648 BGB) is excluded. In other respects the law applies.

## **9. Statute of limitations**

- 9.1. Claims resulting from material defects and defects in title shall be subject to the statute of limitations of one year following delivery of the goods (contrary to Section 438 I No. 3, BGB). If acceptance has been agreed in an individual case, the limitation period shall commence upon acceptance.
- 9.2. The limitation periods of the law on sales also apply to contractual and non-contractual claims for damages of the Buyer that are based on a fault in delivered goods. This applies on condition of the case on the basis of which application of the regular statutory limitation period (Sections 195, 199, BGB) would result in a shorter limitation period in the individual case. The customer's claims for damages according to 8.2, sentence 1 and sentence 2, third bullet point, as well as according to the German Product Liability Act, shall be subject to the statute of limitations according to the statutory limitation periods.

## **10. Place of jurisdiction, choice of law**

- 10.1. These General Terms and Conditions of Business and the contractual relationships between us and the customer are subject to the law of the Federal Republic of Germany by way of exclusion of international uniform law, in particular the UN Sales Law.
- 10.2. Hamburg is deemed the sole place of jurisdiction, including the international place of jurisdiction, for all disputes resulting directly or indirectly from the contractual relationship. However, we are entitled, in any case, to bring legal action at the court with jurisdiction for the Buyer's place of performance of the delivery obligation or the general place of performance. This does not affect overriding statutory requirements, in particular in respect of exclusive jurisdictions.