

GI-RO Technik GmbH & Co. KG

Standard Terms and Conditions for Goods and Services

§ 1 General

- 1.) These Standard Terms and Conditions shall apply to all of our offers or contracts for goods and services in commercial transactions, even where no express reference is subsequently made thereto in the course of ongoing business relations between the parties. Conflicting terms and conditions of the purchaser shall not constitute an integral part of the agreement unless expressly so confirmed by us in writing. However, this too shall not operate to limit the reservation of title under § 4.
- 2.) Our offers are based on the information contained in the purchaser's inquiry and are non-binding and subject to change with respect to prices and potential delivery. The purchaser's orders shall reference the relevant offer and may not contain information other than that which was in the inquiry and the offer. Orders shall not be binding until we have confirmed them in writing. The contents of such confirmation shall be controlling for the relevant transaction's execution. In cases where an order is placed directly, the delivery note or invoice shall also constitute a confirmation of order. The agreement entered into by virtue of the order and confirmation (or delivery note or invoice) may only be amended or supplemented in writing.

§ 2 Prices, terms of payment

- 1.) The prices stipulated in our offer apply *ex works* and are exclusive of packaging, insurance and other shipping costs. Statutory VAT shall be charged separately. For individual gratings under 0.6 m² we charge a scaled mark-up for small-volume purchases. Linear meters of additional banding for cut-offs and cut-outs are charged additionally.
- 2.) Our prices are calculated based on the assumptions that the information provided by the purchaser prior to the submission of our offer will not change, that any preliminary work necessary has already been completed in full, and that we will be able to perform our services all at once and unimpeded. Our offers are based on the purchaser's performance specifications.
- 3.) If the goods or services are not delivered or performed within four weeks from the date on which the agreement was executed, we may increase our prices accordingly if, following execution of the agreement, we incur increased costs, in particular due to collective trade agreements and/or increases in the cost of materials for which we are not responsible. We shall provide proof of any such additional costs at the purchaser's request.
- 4.) To the extent the parties have not arranged for payment in advance, payments shall be due and payable upon provision and invoicing of the goods or services. A separate agreement shall be required for arrangements involving a payment due date or a cash discount.
- 5.) In the event of a material deterioration in the purchaser's financial situation, we may withhold performance until such time as payment has been effected or security has been furnished. In cases where we have already performed, all receivables – even where payment has been deferred – shall become due and payable immediately. The foregoing shall apply, in particular, if the purchaser is in default of payment, if we become aware of any levy of execution being effected and any application being filed to institute insolvency proceedings against the purchaser.
- 6.) If the purchaser defaults on payment, we may claim default interest in the amount provided by law. The right to assert further damage is hereby reserved.
- 7.) Our claims are only subject to set-off against uncontested counterclaims or counterclaims confirmed in a final and binding judgment. Rights of retention arising out of prior or other transactions in the context of the ongoing business relationship may not be asserted. Receivables may only be assigned subject to our written consent.

§ 3 Delivery

- 1.) All goods and services shall be delivered exclusively *ex works* (place of performance). To the extent we arrange for shipping, we do so on the purchaser's behalf, on its account and at its risk. The foregoing also applies where delivery is free, FOB or CIF. In those cases where we are left to select the shipping company, our liability shall be limited to wilful and grossly negligent conduct.
- 2.) Delivery dates shall only be valid if agreed expressly in writing.
- 3.) If we default on the performance of our obligations, the purchaser shall first grant a reasonable grace period. If the grace period expires without result, the purchaser may rescind the agreement. The foregoing shall not affect §323 (2) No. 2 German Civil Code (*Bürgerliches Gesetzbuch*, "BGB"). Default damages are limited to the contract price.
- 4.) In the event of any interruptions in operations upon which we have no direct influence - regardless of whether said interruption occurs in our own operations or the operations of the supplier whose performance is material to the performance of a given contract - specifically strikes, lock-outs, war, unrest as well as all other cases of *force majeure*, we shall be released from our duty to perform for the duration of such event. If it is no longer reasonable for a party to continue performing the agreement, the respective party may terminate the agreement. The foregoing shall not affect the principles under frustration of purpose. We shall promptly notify the purchaser if we should be unable to render performance and will promptly reimburse any consideration already provided.
- 5.) We have the right to retain any plans, drawings, raw materials and other items supplied by the purchaser pursuant to § 369 German Commercial Code (*Handelsgesetzbuch*, "HGB") until such time as we have fully performed all obligations accruing under the business relationship.
- 6.) Packaging is not done based on specific items but rather based solely on transport and production considerations. The larger of the items will always determine the length of the packaging. If the purchaser is in default of acceptance such that we are required to store the goods, these will be stored at the purchaser's risk and against an appropriate storage fee, and the invoice shall become due and payable at the same time. Unless agreed otherwise, we may provide our services in instalments. Instalment payments may be invoiced to a reasonable extent.

§ 4 Reservation of title

- 1.) We hereby reserve title to the delivered or manufactured goods until such time as all claims arising under of the business relationship have been settled. This also applies in cases where individual amounts or all amounts have been included in a current invoice, the balance of which has been established and acknowledged. Payment shall be deemed rendered upon our receipt of the equivalent consideration.
- 2.) If the purchaser is in breach of contract, particularly if it is in default of payment, we may reclaim the goods. To this end, the purchaser shall permit us to enter its offices, its premises and construction sites and to do whatever is necessary to remove the goods. If we take back any goods this shall not constitute any rescission of the agreement unless we expressly so state in writing.
- 3.) The purchaser may resell or process the goods subject to reservation of title ("reserved goods") in the ordinary course of business. It may not otherwise dispose over said goods, specifically it may not pledge them or assign title thereto as security. The goods may only be resold under reservation of title, unless they are resold in exchange for payment in cash immediately upon transfer. The purchaser's right to resell the goods shall expire upon repeated default or discontinuance of payment by the purchaser.

- 4.) The purchaser hereby assigns to us any and all receivables and security interests against its own purchasers or third parties accruing to it by virtue of the resale and regardless of whether the reserved goods are resold without or after processing. We hereby accept said assignment. If the reserved goods are sold together with other goods not owned by us, the assignment shall only apply in an amount equivalent to the value of our goods.
- 5.) The purchaser shall be authorised to collect receivables assigned to us even after the assignment. This shall not affect our authority to collect the receivables ourselves. However, we hereby agree not to collect receivables as long as the purchaser duly satisfies its payment obligations. We may request that the purchaser notify us of the assigned receivables and their debtors, provide us with all the information necessary to collect them, provide all the documentation associated therewith and notify the debtors of the assignment.
- 6.) Any processing or reconfiguring of reserved goods by the purchaser shall always be carried out on our behalf. If such goods are processed together with goods that we do not own or if they are mixed together with goods such that they are inseparable, then we shall acquire a co-ownership interest in the new goods equivalent to the proportionate value of our goods in relation to the other goods. If our goods are attached to other movables such that they form a unit or if they are mixed together such that they are inseparable and the object as a whole is to be seen as a principal object, the parties agree that the purchaser shall transfer to us a proportionate co-ownership interest to the extent that it owns the principal object. The purchaser shall hold title or co-title for us. In all other respects, that which is applicable with respect to the reserved goods shall also be applicable to the goods created as a result of processing.
- 7.) To the extent that the value of the reserved goods is deemed controlling, this value shall follow from our invoiced amount (invoiced value). We agree to release the security interests accruing to us to the extent the value thereof exceeds the claim to be secured by more than 10%.
- 8.) The purchaser is prohibited from entering into any agreements with its own purchasers or any third party to the extent these could in any way preclude or impair our rights. The foregoing applies in particular to such agreements that would prevent or impair the assignment in advance. In the event of a pledge or other third party encumbrance, the purchaser shall inform us without undue delay and provide us with any documentation required for an intervention.

§ 5 Warranty

To the extent not otherwise provided by law, the warranty period is 12 months from the date on which risk passes. No warranty claims will accrue in cases of non-material deviations from the contractually agreed quality. In all other cases, we assume warranty obligations in accordance with the following provisions:

- 1.) The purchaser shall promptly inspect the delivered goods to ensure that they are in conformity with the contract and, if applicable, give notice of any existing defects. Otherwise, § 377 HGB shall apply.
 - 2.) In cases of legitimate objections, we have the discretion to remedy the defect and/or render substitute delivery. The foregoing shall also apply in cases where a legitimate objection has been raised against the remedied defect or the substitute delivery. In those cases where the remedy of defects or the substitute delivery is delayed, omitted or fails, the purchaser may however rescind the agreement or request a reduction in the contract price.
- If the contract involves goods processing, our liability for the impairment of the product to be processed caused as a result of such processing shall be limited to the fee agreed for the respective work.
- 3.) If a portion of the delivered goods is defective, this shall not entitle the purchaser to reject the entire delivery, unless partial delivery is of no interest to the purchaser.
 - 4.) Where there are deviations in the quality of the materials used, our liability is limited to an amount equivalent to our own claims against the respective suppliers. In such case, we shall be released from liability if we assign our claims against the suppliers to the purchaser. Our liability is equivalent to that of a guarantor (surety) unless claims exist against the suppliers based on our fault or such claims are unenforceable.
 - 5.) In cases where notices of defects have been filed late or are otherwise invalid and we chose to negotiate them, this shall not constitute any waiver of our right to assert that the notices of defects were late or otherwise invalid should the negotiations fail.

§ 6 Liability

- 1.) The company's liability for compensation of damage, regardless of the legal grounds on which such liability is based, is limited to wilful and grossly negligent conduct in cases of liability under German product liability law or personal injury as well as in cases of any breach of material contractual duties. Liability shall be precluded in all other respects.
- 2.) To the extent we are liable for ordinary negligence, our liability is limited to reasonably foreseeable damage typical of the agreement in instances of property damage and financial loss. For each individual contract, liability is limited to the respective contract price.

§ 7 Storage, insurance

- 1.) Samples, raw materials and other reusable items and semi-finished and finished products shall be stored beyond the agreed delivery date only subject to prior agreement and for a separate fee.
- 2.) To the extent they have been provided by the purchaser, the aforementioned items shall be handled with care until the scheduled delivery date.
- 3.) In the event of loss or damage of the stored goods, liability shall be limited to 20% of the value of the stored goods in deviation from § 6. If the aforementioned goods are to be insured, the purchaser shall be responsible for obtaining said insurance itself.

§ 8 Governing law, foreign business

- 1.) The parties hereby agree that the laws of the Federal Republic of Germany shall apply with respect to all goods and services and that the UN Convention on the International Sale of Goods (CISG) is excluded.
- 2.) Any and all claims, including ancillary claims arising under the agreement, shall be denominated in the currency of the European Union (euros) unless agreed otherwise.

§ 9 Place of performance, forum, severability

- 1.) Place of performance and forum for any and all claims and disputes arising out of the contractual relationship shall be the competent civil court for Vreden / Westphalia.
- 2.) Should any provision of this agreement be invalid or void, this shall not affect the validity of the remaining provisions. The parties agree to replace the invalid or void provision with a provision that is suited to achieve the intended aim of the invalid or void provision.