

# General Conditions of Sale and Delivery and General Contractual Conditions of the Company TECE GmbH, Hollefeldstr. 57, 48282 Emsdetten/Germany

## 1. Applicability of the Conditions

- 1.1 The deliveries, services and offers of TECE GmbH, Hollefeldstr. 57, 48282 Emsdetten, hereinafter briefly referred to as TECE, shall be based exclusively on these terms and conditions. The latter shall therefore also apply to all future business relationships even if not explicitly agreed upon once again. At the latest on receipt of the goods/services, these conditions shall be deemed accepted. Any acknowledgements of the purchaser with reference to his own conditions of business or purchase are hereby objected to.
- 1.2 Deviations from these terms and conditions shall only be effective if explicitly confirmed in writing by TECE.
- 1.3 These terms and conditions shall apply exclusively with respect to companies, legal entities under public law and special funds under public law within the meaning of § 310 Subsection 1 BGB (German Civil Code).

## 2. Offer and Contract Conclusion

- 2.1 Where the order is to be qualified as an offer pursuant to § 145 BGB, TECE shall be entitled to accept this offer within 4 weeks.
- 2.2 TECE reserves proprietary rights and copyrights with respect to images, drawings, calculations, data and other documents. These must not be made accessible to third parties. This shall also apply to information, especially written documents, which is marked as confidential. Prior to passing on such information to third parties, the purchaser shall require explicit written consent from TECE.
- 2.3 Drawings, images, measures, weights and other performance data shall only be binding if that has been explicitly agreed in writing. Such information shall not be understood as a guarantee of quality.

## 3. Application-technological Advice

- 3.1 Application-technological advice such as installation instructions, standard operating procedures and the creation and calculation of measurements etc. will be provided by TECE to the best of its knowledge. Any data and information regarding the suitability and use of TECE goods shall not exempt the customer from his obligation to carry out own inspections and tests as to whether the products are suitable for the intended processes and purposes; such information shall be non-binding and, as a matter of principle, not give rise to any contractual legal relationship and any ancillary obligations under the delivery contract, unless explicitly agreed otherwise in writing. To such exceptional cases, the following subsections 3.2 and 3.3 shall apply.
- 3.2 For application-technological advice, TECE shall only be liable in cases of willful misconduct and gross negligence. This shall apply without restrictions to advisory activities relating to the application/use of new product developments. In other cases, TECE shall also be liable for simple negligence, albeit only where essential contractual obligations are infringed. Any liability for lost profits, for damage/loss resulting from third-party claims against the customer and for other consequential damage shall be ruled out.
- 3.3 Unless TECE is charged with a willful breach of contract, the liability for damages shall be limited, apart from that, to the foreseeable, typically occurring damage.

## 4. Period of Delivery and Performance, Delay

- 4.1 The delivery period indicated by TECE shall only begin to run once all technical matters/issues have been clarified.
- 4.2 The dates and periods mentioned by TECE shall be non-binding unless explicitly agreed otherwise in writing. As a matter of principle, risks of procurement will not be assumed by TECE.
- 4.3 Delays of delivery and performance due to force majeure and/or because of events, which make the delivery essentially more difficult or impossible for TECE (such as strike, lockout etc.), shall entitle TECE to postpone the deliveries or services by the duration of the hindrance plus an appropriate preparatory period. The same shall apply correspondingly if the aforementioned hindrances have occurred at suppliers of TECE or their sub-suppliers.
- 4.4 Correct and timely self-supply shall remain reserved.
- 4.5 Where TECE has failed to provide a due service in accordance with the contract, the purchaser shall not be entitled to withdraw from the contract and/or demand compensation for damages instead of the entire performance or the reimbursement of futile expenses as far as TECE's breach of duty is insignificant.
- 4.6 TECE shall come in default only as a consequence of a reminder unless something else results from the law or the contract. To become effective, reminders submitted and deadlines set by the purchaser shall require written form.
- 4.7 Compliance with delivery obligations on the part of TECE shall require timely and proper performance of the purchaser's obligations. The defence of non-performance of the contract shall remain reserved. TECE shall be entitled to partial delivery and partial performance at any time.
- 4.8 As far as TECE fails to provide a due service or fails to provide such a service in line with what is owed, the purchaser shall be entitled to withdraw from the contract and, subject to the culpable infringement of a contractual obligation on the part of TECE, to demand compensation for damages instead of performance or the reimbursement of futile expenses without prejudice to the additional prerequisites under the following subsections. Another prerequisite shall be that the purchaser has set an appropriate period of time for performance or subsequent performance and that this period of time has expired unsuccessfully.
- 4.9 The purchaser shall be under obligation to link the period of grace pursuant to Subsection 4.8 above with the explicit statement that, after unsuccessful expiry of the period of grace, he will reject delivery and assert the rights arising against TECE from Subsection 4.8 above.
- 4.10 Where performance has already been provided partially, the purchaser shall only be entitled to demand compensation for damages instead of the entire performance as far as his interest in the entire performance requires so. Withdrawal from the entire contract shall only be possible in this event as far as the purchaser is able to prove that he has no interest in any partial performance.
- 4.11 Where TECE comes in default because of reasons, for which TECE is responsible, the liability for damages shall be ruled out in cases of ordinary negligence. The aforementioned limitation of liability shall not apply if the delay results from TECE's culpable infringement of an essential contractual obligation. In this event, the liability of TECE shall be limited, pursuant to Subsection 4.13 below, to the foreseeable damage typical of this kind of contract. In the event of any willful infringement of the contract, for which TECE is responsible, TECE shall be liable according to the statutory provisions. More far-reaching compensation claims of the purchaser shall be ruled out in all cases of delayed delivery including after expiry of a period of grace possibly set to TECE. This shall not apply as far as compulsory liability is in place because of willful misconduct, gross negligence and bodily injury; this shall not be associated with any change of the burden of proof to the disadvantage of the purchaser.
- 4.12 In the event of delayed acceptance by the purchaser or in the event of infringement of other obligations to cooperate by the purchaser, TECE shall have the right to assert the legal claims, to which TECE is entitled. The risk of accidental loss and/or accidental deterioration of the object of purchase shall be transferred to the purchaser no later than at the point in time, at which the purchaser comes in default of acceptance.
- 4.13 Where TECE comes in default, the purchaser shall be entitled – if he provides conclusive evidence that he has suffered damage as a result of such default – to demand compensation of 0.5 % at the most for each full week of delay in case of simple negligence without prejudice to the limitation of liability under Subsection 4.11 above. Overall, however, he shall not be entitled to demand more than 10 % of the price for that part of the delivery which the purchaser could not put into useful operation because of the delay.

## 5. Transfer of Risk, Packaging

- 5.1 Unless otherwise agreed, delivery ex stock from TECE in Emsdetten shall be agreed. The risk will be transferred to the purchaser as soon as the shipment has been handed over to the person executing transportation or has left the TECE warehouse for shipping purposes. This shall also apply if TECE carries out the transportation by means of own personnel.
- 5.2 If shipping becomes impossible through no fault of TECE, the risk will be transferred to the purchaser as soon as the delivery is reported as ready for shipment.
- 5.3 If the purchaser wishes, TECE will cover the delivery through goods in transit insurance. The costs incurred in this respect shall be borne by the purchaser.
- 5.4 The transport packaging and any other packaging pursuant to the German Packaging Regulation shall not be taken back, except for repeatedly usable means of transport such as pallets, lattice boxes, pressure cylinders etc. The purchaser shall be under obligation to arrange for the disposal of non-returnable packaging at his own expense. The repeatedly usable means of transport will be made available to the purchaser only by way of lending. The purchaser shall be under obligation to return them in proper condition, i.e. completely emptied and without damage. In case of contamination or damage of the means of transport, the purchaser shall bear the cost of repair or provide TECE with compensation for lost value if repair is impossible.

## 6. Prices and Payments

- 6.1 The prices indicated in the respective current price lists of TECE plus the respectively applicable statutory value-added tax shall be relevant. Additional deliveries and services shall be invoiced separately.
- 6.2 Unless otherwise agreed, the prices shall be prices ex stock of TECE in Emsdetten including normal packaging.
- 6.3 Unless explicitly agreed otherwise, the amount invoiced shall be due without any deductions 30 days after the date of issue of the invoice.
- 6.4 Where the purchaser comes in default of payment, TECE shall be entitled to assert the rights arising under § 288 BGB (German Civil Code).
- 6.5 The purchaser shall only be entitled to rights of setoff if his counterclaims have been finally established, are undisputed or have been acknowledged by TECE. Moreover, he shall only be entitled to exercise a right of retention insofar as his counterclaim is based on the same contractual relationship.
- 6.6 Where TECE is aware of circumstances calling the purchaser's creditworthiness into question, TECE shall be entitled to demand advance payments or security deposits without prejudice to more far-reaching legal claims.
- 6.7 Cheques and bills of exchange, in respect of which TECE reserves acceptance, shall only be considered as payment following redemption. Possible discount and bank charges shall be at the expense of the purchaser.
- 6.8 The goods shall be delivered in accordance with these terms and conditions subject to the reservation of proprietary rights. As far as TECE agrees with the purchaser on payment of the purchase price debt via the cheque/bill of exchange procedure, the reservation of proprietary rights shall also extend to the purchaser's redemption of the bill of exchange accepted by TECE and not expire through credit entry of the received bill of exchange.

## 7. Warranty

- 7.1 The warranty rights of the purchaser shall require that the purchaser has properly met his obligations to perform an inspection and raise a complaint as owed under § 377 HGB (German Commercial Code).
- 7.2 The legal rights of recourse of the purchaser against TECE shall only be in place insofar as the purchaser has not reached any agreement with his customer that goes beyond the legal rights to claim damages for defects.
- 7.3.1 As far as the object of purchase shows a defect, for which TECE is responsible, TECE shall first be given the opportunity for subsequent performance within appropriate periods of time. TECE shall be entitled, at its own choice, to remedy the defects or make replacement delivery.
- 7.3.2 If subsequent performance fails, the purchaser shall be entitled – without prejudice to possible claims for damages – to withdraw from the contract or reduce the purchase price. Claims of the purchaser regarding the expenses required for subsequent performance, especially transportation costs, infrastructure costs, labour costs and costs of materials, shall be ruled out insofar as such expenses increase because the object of delivery was subsequently taken to a place other than the place of performance, unless taking the object there is part of its intended use.
- 7.4.1 Claims for damages because of defects shall not be in place in case of only insignificant deviations from the agreed quality, in case of an only insignificant impairment of usability, in the event of natural wear and tear and/or in case of damage having occurred after the transfer of risk due to inaccurate or negligent handling, excessive exposure, unsuitable operating devices and/or which arise because of particular external influences and/or are not stipulated in the contract.
- 7.4.2 If the operation and/or maintenance instructions given by TECE are not adhered to, inadmissible changes are made to the products, parts are exchanged and/or consumable materials are used, which do not comply with the original specifications, the liability of TECE for material defects shall cease to apply, unless the warranty case is verifiably not attributable to one of the aforementioned reasons for exclusion.
- 7.5 Claims because of material defects shall come under the statute of limitations in 12 months. This period shall begin running upon the transfer of risk. The aforementioned provisions shall not apply if the law stipulates longer periods pursuant to BGB §§ 438 Subsection 1 no. 2 (objects for buildings), 479 Subsection 1 (Right of Recourse) and 634 a (Constructional Defects).
- 7.6.1 Unless otherwise agreed hereafter, more far-reaching claims of the purchaser – on whatever legal grounds – shall be ruled out. Therefore, TECE shall not be liable for damage not having been caused to the delivery item itself; in particular, TECE shall not be liable for lost profits or other financial damage suffered by the purchaser.
- 7.6.2 If TECE infringes a cardinal obligation or essential contractual obligation through negligence, the liability to pay damages of TECE shall be limited to the sum insured of the product liability insurance, amounting to EUR 1.5 million. As far as the insurance does not provide cover, TECE shall be under obligation to provide compensation itself. On request, TECE is ready to let the purchaser inspect this policy. TECE undertakes to maintain the insurance until expiry of the warranty obligation subject to these conditions.
- 7.6.3 The aforementioned exclusions of liability shall not apply if the damage is attributable to willful misconduct or gross negligence. Moreover, they shall not apply either to cases of bodily injury and/or damage to health and to cases, in which the purchaser asserts claims for damages due to a guarantee having been assumed for the existence of a certain quality/property, unless the purpose of the quality/property guarantee only extends to compliance of the underlying delivery with the provisions of the contract, but not to the risk of consequential damage caused by a defect. The aforementioned regulations are not associated with any change of the burden of proof to the disadvantage of the purchaser.
- 7.7 Payments made by TECE without explicit reason are a gesture of goodwill.

## 8. Joint and Several Liability

- 8.1 Any liability for damages going beyond what is stated in Section 7 shall be ruled out – without respect of the legal nature of the asserted claim – especially as far as the infringement of obligations under a non-contractual relationship and through an impermissible act is concerned.
- 8.2 The exclusion of liability pursuant to Subsection 8.1 above shall not apply to claims under the German Product Liability Act and in cases of damage to life, body or health.
- 8.3 As far as TECE's liability is ruled out or restricted, this shall also apply to the personal liability of employees, staff members, personnel, representatives and auxiliary persons of TECE.
- 8.4 The customer expressly warrants that he/she is entitled to publish and duplicate the texts and motifs. In particular, the customer hereby gives assurance that he/she will uphold all data-protection and privacy rights of all parties concerned. The customer shall not transmit any data whose content infringes any third-party rights (in particular those relating to competition or copyright law), or which violates existing laws or good morals. The customer hereby assumes full liability and exempts TECE from all third-party claims, in particular those relating to competition or copyright law. If claims are asserted against TECE, TECE shall also be indemnified against the legal costs necessary for its legal defence.

## 9. Reservation of Proprietary Rights

- 9.1 The goods delivered shall remain property of TECE until complete payment of all accounts receivable relating to the business relationship between TECE and the purchaser has been made. The inclusion of individual accounts receivable in a current invoice and the acknowledgement of the respective account balance shall not affect the reservation of proprietary rights. Only receipt of the equivalent amount by TECE shall be considered as payment.
- 9.2 If the purchaser acts in a manner contrary to contract, especially in the event of delayed payment, TECE shall be entitled to take back the object of purchase. The fact that TECE takes back the object of purchase shall not constitute withdrawal from the contract unless this is stated explicitly and in writing by TECE.
- 9.3 A seizure of the object of purchase by TECE shall always constitute withdrawal from the contract. After TECE has taken back the object of purchase, TECE shall be entitled to its commercialisation. The proceeds of commercialisation less reasonable costs of commercialisation shall be set off against the purchaser's account payable.
- 9.4 The purchaser shall be under obligation to handle the object of purchase with care. In particular, he shall be under obligation to sufficiently insure the object of purchase, according to its replacement value and at his own expense, against damage caused by fire, water and theft. Where maintenance and inspection works are required, the purchaser will have to carry out these works in due time at his own expense.
- 9.5 In the event of seizure or any other intervention by third parties, TECE shall be notified in writing without delay, so that TECE will be able to bring legal action pursuant to § 771 ZPO (Code of Civil Procedure). As far as the third party is unable to reimburse the judicial and extrajudicial costs of a lawsuit pursuant to § 771 ZPO to TECE, the purchaser shall be liable for the resulting loss.
- 9.6 The purchaser shall be entitled to resell the goods being subject to the reservation of proprietary rights in the framework of his regular course of business. However, he already now cedes to TECE all accounts receivable, which he acquires against his customers or third parties as a result of the resale, up to the final invoice amount (including value-added tax) of the accounts receivable, to which TECE is entitled. The cession shall be made regardless of whether the object of purchase has been resold without processing or after processing. TECE accepts the cession. If the ceded receivable against the acquirer of the goods being subject to the reservation of proprietary rights has been included in a current invoice (current account), the cession shall also refer to the acknowledged account balance and, in case of the respective customer's insolvency, to the "causal account balance" being in place in this event. In spite of the cession, the purchaser shall be entitled to collect this receivable. The authority of TECE to collect the receivable itself shall remain unaffected. However, TECE undertakes not to collect the receivable as long as the purchaser meets his payment obligations relating to the collected proceeds, as long as he is not in default of payment and, in particular, as long as no application for the opening of insolvency proceedings has been filed or no cessation of payments has occurred. Where this is the case, however, TECE shall be entitled to demand from the purchaser to notify TECE of the ceded accounts receivable and their respective debtors, provide any information necessary for collection, hand over the related documents and notify the debtors (third parties) of the cession.
- 9.7 Processing or alteration of the goods subject to the reservation of proprietary rights by the purchaser shall always be done on behalf of TECE. If the goods subject to the reservation of proprietary rights are processed together with other objects not belonging to TECE, TECE shall acquire co-ownership of the new object in accordance with the proportion between the value of the goods subject to the reservation of proprietary rights (final invoice amount including VAT) and the value of the other processed objects at the time of processing. Apart from that, the same regulations shall apply to the object having resulted from such processing activities as are applicable to the goods delivered subject to reservations.
- 9.8 If the goods subject to the reservation of proprietary rights are combined inseparably with other objects not belonging to TECE, TECE shall acquire co-ownership of the new object in accordance with the proportion between the value of the goods subject to the reservation of proprietary rights (final invoice amount including VAT) and the value of the other, combined objects at the time of such combination. If the combination is done in such a way that the object of the purchaser is to be regarded as the main object, it shall be considered as agreed that the purchaser transfers proportionate co-ownership to TECE. The purchaser shall store the resulting sole or joint property for TECE.
- 9.9 TECE undertakes to release the securities, to which TECE is entitled, on request from the purchaser insofar as the marketable value of the securities, to which TECE is entitled, exceeds the accounts receivable to be covered by more than 10 %. The securities to be released shall be selected by TECE.

## 10. Applicable Law, Place of Jurisdiction, Partial Voidness

- 10.1 For all current and future claims under the business relationship with contractors, legal entities under public law and special funds under public law including cheque receivables and bill of exchange-related receivables, the exclusive place of jurisdiction shall be the registered office of TECE in Emsdetten. However, TECE shall also be entitled to sue the purchaser at the court responsible for the purchaser's place of domicile.
- 10.2 Unless otherwise stated in the order confirmation, the registered office of TECE in Emsdetten shall be the place of performance.
- 10.3 These terms and conditions and all legal relationships between TECE and the purchaser shall be subject to the law of the Federal Republic of Germany. Any applicability of the U.N. Convention of 11 April 1980 on Contracts for the International Sale of Goods (Federal Gazette 1989 II p. 588, adjusted 1990 II, 1699) shall be ruled out.

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