

SaarGummi Construction Deutschland GmbH General Terms and conditions of sale and delivery for commercial transactions

1. General- area of application

- 1.1** The contractual relationship shall be solely based on our general terms and conditions of sale and delivery. Conditions to the contrary or those varying from our general terms and conditions of sale and delivery or supplementary conditions on the part of the purchaser, shall not be acknowledged, unless we have specifically agreed to their applicability in writing. Our general terms and conditions of sale and delivery continue to apply even if we make delivery without reservation in the awareness of conditions to the contrary or those varying from our general terms and conditions of sale and delivery or supplementary conditions on the part of the purchaser. The purpose of these general terms and conditions of sale and delivery and the individual contracts ("contract") concluded in accordance with them, shall be the sale of our products and/or the delivery of products to be manufactured by us and, where applicable, any related consultation services.
- 1.2** These general terms and conditions of sale and delivery shall also apply to all future business between the contracting partners without requiring further reference to these general terms and conditions; this continues to apply even if these terms and conditions only come to the attention of the purchaser on the occasion of the first transaction and after conclusion of the contract. Changes or additions to these general terms and conditions of sale and delivery are valid and effective only if they are confirmed in writing by us. The purchaser and us agreed that we are entitled to unilaterally change these general terms and conditions of sale and delivery and notify the purchaser of such changes and the purchaser is required to become familiar with such changed GTC.
- 1.3** These general terms and conditions of sale and delivery shall only apply to companies within the meaning of section 310 (1) and section 14 German Civil Code (§310 Abs.1,14 BGB).

2. Quotations - quotation documents

- 2.1** Our quotations are subject to change and without obligation. Our brochures, price lists, catalogues or other publications do not represent any contractual offer, unless expressly designated by us as binding contractual offers.
- 2.2** The placement of an order for the goods by the purchaser shall constitute a binding contractual offer, unless specified otherwise in the order itself or by means of other agreements. A purchasers' order shall include precise identifica-

tion and specification of the demand (goods or services), the amount of goods required (unless agreed otherwise between us and the purchaser) and the place of delivery. We are entitled to accept this contractual offer within 4 weeks of receipt by us. Once the contractual offer is accepted, the purchaser cannot change the order without our prior written consent. Acceptance of the order may be declared either by way of written confirmation stating the information on the price of the ordered goods, as well as the expected date of delivery (e.g. by fax or e-mail) or delivery of the goods to the purchaser.

- 2.3** We reserve the ownership rights and copyrights to all quotations, illustrations, drawings, calculations and other documentation; these may not be disclosed to third parties without our prior written consent. This applies particularly to such written documentation which is designated as „confidential“.

3. Prices - terms of payment

- 3.1** Unless specified otherwise in the order confirmation, our prices apply "FCA place of delivery Incoterms 2020", exclusive of normal packaging and are subject to VAT at the prevailing legal rate.
- 3.2** Our prices remain firm for deliveries to be made up to 4 months after the conclusion of the transaction, unless the delivery is made within the scope of a continuing obligation. In case of deliveries not to be made within 4 months after the conclusion of the transaction, we reserve the right to amend our prices accordingly if cost changes occur after order confirmation, including without limitation, due to wage agreements and material price changes. We shall provide proof of the cost changes upon request of the purchaser. Granting of any discount to the purchaser is possible only upon written agreement.
- 3.3** The purchaser is obliged to pay our invoices immediately on receipt, no later than 14 days after the receipt of the invoice and without deduction. The date of receipt of the invoice amount shall be decisive for the compliance with the required period. Upon expiry of this period the purchaser is deemed in delay of payment. If the purchaser delays in the payment of the agreed price or its part, we are entitled to claim from the purchaser a contractual penalty of 0.5% per day from the outstanding amounts per each already started day of delay. Our right to the contractual penalty arises at the moment the purchaser delays in payment of the agreed price or its part, and purchaser is obligated to pay to us the contractual penalty on the basis of our written request for the payment of the contractual penalty addressed to the purchaser. Our claim for damages in the full amount in addition to the agreed contractual penalty shall remain unaffected. In case of agreed payment by "cash collection against documents", all costs incurred by the collection of payment shall be borne by the purchaser. The actual payment of the price by the means of bank transfer and / or deposit is deemed to be executed at the moment when the bank account stated in the invoice or other documentation is credited with the full relevant invoiced amount, unless

we notify the purchaser of another bank account into which purchaser is obliged to pay the invoiced price. The costs of payment are borne in full by the purchaser. Dem Käufer steht nur dann ein Recht auf Gegenrechnung oder Zurückbehaltung zu, wenn seine aus sonstigen mit uns geschlossenen Verträgen bestehenden Gegenansprüche rechtmäßig sind, nicht angefochten werden und von uns anerkannt wurden.

- 3.4** The purchaser may only be entitled to rights of setoff or retention if his/her counterclaims arising from other contracts concluded with us are established by law, undisputed or acknowledged by us.

4. Delivery – liability for delay

- 4.1** Unless otherwise agreed, the delivery period shall be 6 weeks after the conclusion of the contract. Even if delivery periods have been agreed as binding, we are not deemed in delay of delivery without a reminder of the purchaser.

- 4.2** In case of delay of delivery caused by reasons within our responsibility, the purchaser sets an additional appropriate period for delivery. If this second period has expired unsuccessfully, the purchaser announces within 14 days whether he still wishes to take the delivery, withdraw from the contract, or claim compensation for damages in lieu of performance; otherwise it is only entitled to delivery. Should the Seller claim compensation for damages, the provisions set out in section 8 shall apply.

- 4.3** The liability limitation pursuant to section 8.1, 2 does not apply if the delay is due to intentional or gross negligence or breach of a material contractual obligation by us. Nor does it apply if a commercial fixed-date transaction has been agreed.

- If the purchaser does not fulfill his/her contractual duties to cooperate at the agreed times or within an appropriate period after being requested by us to do so, any agreed delivery dates may be postponed by the corresponding period.
- 4.4**

- Partial deliveries shall be admissible. In this case the partial invoices shall apply.
- 4.5**

5. Transport – transfer of risk

- 5.1** Unless specified otherwise in the order confirmation, delivery is made "FCA place of delivery Incoterms 2020". The dispatch, transport and packaging costs shall be borne by the purchaser.

- 5.2** The risk shall pass to the purchaser no later than with the dispatch of the delivery parts according to FCA place of delivery Incoterms 2020, even if partial de-

liveries are made or we have agreed to assume additional services, e.g. dispatch costs. At the express request of the purchaser and at his/her cost, we shall insure the delivery against theft, breakage, transport, fire and water damage and other insurable risks, as requested by the purchaser.

- 5.3** If delivery is made by means of our own reusable palettes, transport containers, coils or similar transport equipment, these must be returned by the purchaser carriage paid, in a reusable condition and within 14 days. If the equipment is not returned despite the setting of an appropriate additional period, and/or if the equipment is returned damaged due to circumstances for which the purchaser is responsible, purchaser shall bear the costs of replacement and/or the costs required in order to restore the damaged equipment to a reusable condition.
- 5.4** If the dispatch is delayed due to circumstances for which the purchaser can be held responsible, the risk shall pass to the purchaser from the date on which it was notified of the readiness for dispatch. This applies, in particular, if the purchaser has instructed us to dispatch the delivery at a later date, and we have agreed to this. If demanded by the purchaser, we offer to provide the goods of purchase with insurance against accidental destruction or accidental deterioration at his/her cost.

Delivered objects shall be accepted by the purchaser even if they show insignificant defects, notwithstanding its rights arising from the stipulations on the liability for defects within the scope of these terms and conditions.

6. Default of acceptance

If the purchaser is in default of acceptance and has not accepted the delivery within an additional period set by us, we are entitled, notwithstanding any further legal rights, to require 20% of the agreed payment for any additional costs and without providing proof for the actual additional costs incurred. The purchaser's option to provide proof for significantly lower additional costs in individual cases shall remain unaffected. We shall reserve the right to claim actual higher additional costs incurred instead of the above fixed charge.

7. Liability for defects

- 7.1** In the event of defects of quality and title (including incorrect or short delivery, improper installation and faulty installation instructions), the rights of the purchaser shall be subject to the applicable statutory regulations, unless specified otherwise below.
- 7.2** The claims of the purchaser arising from defects require the proper fulfillment of his/her legal obligations to inspect and examine the goods.

- 7.3** If the objects of purchase prove to be defective, we are entitled, at our discretion, to subsequent performance by removing the defects, delivery of new items free of defects or to return the payment transferred by the purchaser for defective products. In the event that the defects are removed, we shall bear all costs incurred for the purposes of removing the defects, provided that they are not increased due to the fact that the objects of purchase have been transported to another place differing from the place of performance. In the case of replacement delivery, the purchaser shall return the defective items in accordance with the legal requirements.
- 7.4** If subsequent performance fails, the purchaser shall be entitled, at its own discretion, to withdrawal from the contract or reduction of price. Insignificant defects do not entitle the purchaser to withdraw from the contract.
- 7.5** Compensation for damages for which we are responsible as a result of defects (including compensation for damages in lieu of performance) shall be paid in accordance to the stipulations of section 8.
- 7.6** In the case of structures and objects that were used according to their normal intended use in line with a construction and which have caused its defectiveness, the limitation period for claims for defects pursuant to section 438 (1) subparagraph 2 German Civil Code (§ 438 Abs. 1 Ziffer 2 BGB) shall be 5 years from delivery, unless a shorter limitation period is agreed in accordance with the German Construction Contract Procedures/Part B (Vergabe- und Vertragsordnung für Bauleistungen/Teil B, VOB/B). In deviation of section 438 (1) subparagraph 3 German Civil Code (§ 438 Abs. 1 Ziffer 3 BGB), the limitation period for claims arising from defects with regard to other objects shall be 1 year from delivery, provided that the defect was not caused by willful intent on our part. This shall not apply to claims for damages due to a defect, as far as these claims for damages are resulting from injury to life, body or health or to the extent that we are liable for willful intent or gross negligence. In the event that we have fraudulently concealed a defect, the regular limitation period pursuant to section 438 (3) German Civil Code shall apply.

8. Other liability - withdrawal

- 8.1** We shall be liable for damages only in the event of willful intent or gross negligence. In addition, we shall be liable for simple negligence, (a) for damages arising from injury to life, body or health, (b) for damages resulting from the breach of a material contractual obligation; in case (b), our liability is limited to compensation for the foreseeable, typically occurring damage and to the invoice price.

The above limitations of liability shall not apply in the event that we have fraudulently concealed a defect or provided a separately agreed guarantee for the quality of the goods. The same applies to claims of the purchaser under the German Product Liability Act.

- 8.2** To the extent that our liability is excluded or limited, this shall also apply to the personal liability of our employees, staff members, co-workers, representatives or agents.
- 8.3** In the case of a breach of duty which does not consist of a defect, the purchaser may only withdraw from the contract - provided that the other legal requirements exist - if we are responsible for such breach of duty. Withdrawal is excluded if the breach of duty is insignificant. Withdrawal from the contract shall be declared in writing.

9. Retention of title

- 9.1** The sold goods shall remain our property until receipt of full payment of all claims arising from the purchase contract and the ongoing business relationship.
- 9.2** The goods which are subject to retention of title may neither be pledged to third parties nor transferred by way of security until the secured claims have been paid in full. The purchaser is under the obligation to handle the objects of purchase with all due care. In particular, it is obliged to sufficiently insure them at its own cost against fire, water damage and theft at their replacement value.
- 9.3** In the event of seizures of goods or other interventions by third parties, the purchaser shall immediately notify us in writing, so that we can enforce the rights to our property. At our request, the purchaser shall provide us with all information and all necessary documentation to enable us to safeguard our rights. If the third party concerned is not in a position to reimburse us for the judicial and extrajudicial costs incurred for asserting the rights to our property, the purchaser shall be liable for the losses sustained in the case of circumstances for which it is responsible.
- 9.4** The purchaser shall be entitled to resell the objects of purchase in the normal course of business. However, the purchaser shall assign to us already at this date all claims in the amount of the total sum of the final invoice (including VAT) which it will incur against his/her purchasers or third parties for reselling the objects that are subject to retention of title, irrespective of whether the objects of purchase are resold without or after processing. The purchaser commits to notifying us of the assigned claims and their relevant debtors, providing all information required for collection and releasing the related documentation necessary for collection. The purchaser shall remain entitled to collect the assigned claim even after assignment. Our right to collect the claim ourselves shall remain unaffected thereof. However, we commit ourselves to not collecting the claim as long as the purchaser duly fulfills all his/her payment obligations, is not in default of payment, and, in particular, that no application to open bankruptcy, composition or insolvency proceedings has been filed or that it has not suspended payments.

- 9.5** The processing or alteration of the objects of purchase shall always be carried out by the purchaser on our behalf. If the objects of purchase are processed with other objects not belonging to us, we shall acquire joint ownership of the new object in a ratio of the value of the objects of purchase to the other processed objects at the time of processing. In all other respects, the same applies to the objects created by processing as to the objects of purchase that are subject to retention of title.
- 9.6** If the objects of purchase are inseparably mixed with other objects not belonging to us, we shall acquire joint ownership of the new object in a ratio of the value of the objects of purchase to the other mixed objects at the time of mixing. If the mixing takes place in such a way that the objects of the purchaser are regarded as the main objects, purchaser shall deem to agree to the transfer of joint ownership to us on a pro rata basis.
- 9.7** The purchaser shall safeguard the created sole or joint ownership according to the above provisions on our behalf. In all other respects, the same applies to the objects created by processing or mixing as to the objects of purchase that are subject to retention of title.
- 9.8** If the objects of purchase are subject to retention of title and are combined by the purchaser in the course of processing with a real property or building and therefore become an integral part of the real property or building, the purchaser shall assign to us already at this date, without the need for any further special explanations, its payment claims for the work which would be the remuneration for the processing, together with all subsidiary rights as security in the amount of the ratio of the value of the combined objects of purchase to the value of the other combined objects of the purchaser at the time of combination, whereby the claims assigned to us take precedence over the remainder of the payment claims for work. With regard to the assigned payment claims for work, the stipulations set forth in section 9.4 concerning the purchase price claims assigned in advance shall apply accordingly.
- 9.9** Upon request of the purchaser, we shall release the securities due to us to the extent that the value of our securities exceeds the claims to be secured by more than 20%. The selection of the securities to be released shall be incumbent on us.
- 9.10** In the event that the purchaser acts in breach of contractual duties, in particular, in the case of non-payment of a due purchase price, we are entitled to withdraw from the contract in accordance with the statutory provisions and to reclaim the goods on the basis of the retention of title and the withdrawal from the contract. If the purchaser fails to pay the purchase price when due, we may only enforce these rights if we have unsuccessfully set an appropriate time limit for the payment beforehand, or the setting of such a time limit is not necessary according to the statutory provisions. We are entitled to utilize the objects of purchase after their return; the proceeds of the utilization – minus appropriate utilization costs – shall be set off against the purchaser's liabilities.

10. Applicable law - place of jurisdiction

- 10.1** These general terms and conditions of sale and delivery and all legal relationships between us and the purchaser shall be governed by the laws of the Federal Republic of Germany, thereby excluding the UN Convention on Contracts for the International Sale of Goods.
- 10.2** The place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be the Regional Court of Saarbrücken. However, we shall also be entitled to sue the purchaser in a court of competent jurisdiction at the place of its registered office.