

General Terms of Delivery and Payment of JFA FLOCK Applikationen GmbH

Valid as of: 15.04.2019

1. Scope of application

- 1.1 Our General Terms of Delivery and Payment (hereinafter referred to as: terms of delivery) shall apply exclusively. We are not bound to any deviating terms of the buyer that we do not expressly acknowledge in writing, even if we do not expressly object to them. An order by the customer shall be deemed as acknowledgement of our terms of delivery. Our terms of delivery shall also apply if we execute the delivery in knowledge of contradictory or deviating terms of the buyer without reservation.
- 1.2 Our terms of delivery apply only vis-à-vis persons who when entering into the contract act by exercising their commercial or independent professional activity (entrepreneur within the meaning of Section 310 para. 1 BGB [German Civil Code]) as well as vis-à-vis legal entities under public law or public-law special funds.
- 1.3 These terms of delivery shall apply as amended also to future offers and contracts on the sale or delivery of goods with the same customer, without the need for us to again refer to them in each individual case.

2. Contract issuance

- 2.1 Our offers are subject to change and non-binding unless they are expressly identified as binding or contain a certain deadline for acceptance.
- 2.2 Our written order confirmation is required for the scope of the delivery.
- 2.3 Changes to the technical design of the ordered products in a commercially customary manner are permissible if such does not cause a substantial change in function or the customer cannot reasonably be expected to accept such change.
- 2.4 We warrant the composition of an item only if it has been expressly promised in our order confirmation or in our advertising.

3. Prices and payment terms

- 3.1 If no other arrangement is made in the order confirmation, our prices are "ex works" (EXW, Incoterm 2010). The costs for packaging, dispatch, insurance and customs duties etc. will be invoiced separately. We are entitled to invoice partial deliveries separately if we are permitted to make such deliveries pursuant to item 4.2.

- 3.2 The statutory value added tax is not included in our prices; it will be shown separately in the invoice in the statutory amount on the date the invoice is issued.
- 3.3 A special written agreement is required for discount deductions.
- 3.4 If no other arrangement is reached regarding the order confirmation, payment shall be made without deductions within 14 days after receipt of the invoice, but no later than 30 days after delivery. The statutory provisions apply to the consequences of default of payment.
- 3.5 The buyer is entitled to the right of offset only if his counterclaims have been upheld by a court, are uncontested or acknowledged by us. The buyer is also not entitled to a right of reservation due to counterclaims that are disputed and not upheld by a court.
- 3.6 In the event the buyer fails to comply with the terms of payment or in circumstances in which the creditworthiness of the buyer is called into question, we are entitled to demand immediate payment for all deliveries. We are also entitled to provide outstanding deliveries only against advance payment or the furnishing of security or to withdraw from the contract and demand compensation for damage. We are also entitled to forbid the resale of the goods delivered under reservation of title and to immediately recover the goods at the buyer's expense if we have withdrawn from the contract.

4. Delivery

- 4.1 Specifications of particular delivery periods and dates are subject to the reservation that we are ourselves are supplied correctly and in a timely fashion.
- 4.2 Within reasonable parameters, we are entitled to make partial deliveries.
- 4.3 The start of the delivery period is conditional on the timely and proper fulfilment of the buyer's obligations. If these obligations are not met in a timely fashion, the delivery period shall be extended appropriately. The delivery period will also be extended appropriately if its non-compliance is attributable to force majeure, e.g. war or similar events, such as a strike.
- 4.4 A delivery period or a delivery date shall be deemed to have been met if readiness to dispatch or pick-up is reported before expiry or the goods have departed from the plant or the warehouse, or are handed over to the forwarding agent, the carrier or to any other person responsible for forwarding them.
- 4.5 Default of delivery is determined by the statutory provisions. But in any case, a reminder by the buyer is required.
- 4.6 In the event of default for delivery for which we are responsible, the buyer – if his claim of damage suf-

ferred is convincing – is exclusively entitled to demand a lump sum compensation for default in the amount of 0.5% of the order value, a maximum of 5% of the order value for each completed week of default. We reserve the right to prove to the buyer that no damage was suffered as a result of the default of delivery or that a substantially lower damage was incurred. Both claims for compensation by the buyer based on a delay in delivery and claims for compensation in lieu of performance, which extend beyond the above limit, are excluded in all cases of delayed delivery.

- 4.7 The rights of the buyer pursuant to item 8 of these terms of delivery and our legal rights, in particular in the event of an exclusion of the performance obligation (e.g. based on impossibility or unreasonableness of performance and/or subsequent performance) shall remain unaffected.
- 4.8 If we are responsible for the default of delivery, the buyer may withdraw from the contract if he has previously given us a reasonable grace period and it has expired without yielding a desired result. Upon our request, the buyer must inform us within a reasonable period of time whether he wishes to withdraw from the contract due to the delay of delivery or insists on delivery. This does not apply if a commercial fixed transaction was agreed.
- 4.9 Transport packaging and all other packaging pursuant to packaging regulations shall not be taken back for a b2b delivery; pallets represent an exception. The buyer is responsible for disposing of the packaging at his own expense.

5. Transfer of risk

- 5.1 If no other arrangement is reached in the order confirmation, delivery "ex works" is agreed.
- 5.2 Upon the buyer's request we will take out transport insurance for the delivery to cover typical transport risks; the buyer will bear the costs incurred.
- 5.3 For agreed deliveries, the risk of accidental loss or accidental deterioration of the delivery is transferred to the buyer, to include freight prepaid delivery, as soon as the delivery has been transferred to the person performing the transport or for the purpose of dispatch, has left our warehouse.
- 5.4 If to fulfil our performance obligation we are obligated only to make the delivery ready for pick up at our location, the delivery is ready for dispatch and pick up and the pick-up is delayed for reasons for which we are not responsible, the risk of accidental loss or accidental deterioration of the delivery shall be transferred to the buyer as soon as the buyer has received notification of dispatch or pick-up readiness. If notification of dispatch readiness is not made, the risk is transferred to the buyer upon transfer of the goods to the carrier, but no later than upon departure from the plant or warehouse. This

also applies when our transport facilities are used or prepaid delivery is made.

6. Reservation of title

- 6.1 In all cases, we reserve the right of reservation of title to all goods delivered. Ownership is not transferred to the buyer until after complete payment is made.
- 6.2 The buyer shall promptly inform us of pledges or other interventions by third parties so that we can file an action pursuant to Section 771 ZPO [Code of Civil Procedure]. If the third party is not in a position to reimburse us for the court costs of such action, the buyer is liable for the shortfall we have incurred.
- 6.3 The buyer is entitled to resell the delivered goods in the ordinary course of business; however, with immediate effect, he assigns to us all claims in the amount of the invoiced final amount (including value added tax) that he accrues from the resale against his buyers or third parties, irrespective of whether the item was resold without or after processing. We accept this assignment with immediate effect.
- 6.4 The buyer shall also retain the right to collect the assigned claims after the assignment. Our authority to collect the claim ourselves shall remain unaffected. We are obliged, however, not to collect the claim as long as the buyer fulfills his payment obligations under the appropriated proceeds, is not in default of payment and no insolvency proceedings have been instituted against his assets or he has ceased making payments. As soon as we can collect on assigned claims ourselves, the buyer is obliged upon our request to disclose to us the assigned claims and their debtors, to give us all information required for collecting, to give us the corresponding documents and to report the assignment to the debtors (third parties).
- 6.5 The buyer is entitled to use the goods in the customary course of business and to process/transform them. The processing or transformation of the delivered goods by the buyer will always be undertaken for us. If the delivered goods are processed with other objects that do not belong to us, we shall acquire co-ownership of the new object in proportion to the value of the delivered goods to the other processed objects at the time of processing. With respect to the object created by the processing, the same applies as for the goods delivered under reservation.
- 6.6 If the delivered goods are inseparably commingled with other objects that do not belong to us, we shall acquire co-ownership of the new object in proportion to the value of the delivered goods to the other commingled objects at the time of commingling. If the commingling is carried out in a manner such that the delivered goods can be seen as the main object, it is agreed that the buyer shall transfer co-ownership proportionately. The buyer shall safeguard the thus created sole ownership or co-ownership for us.

- 6.7 In the event of any conduct contrary to the terms of the contract by the buyer, in particular in the event of default of payment, we are entitled to recover the goods delivered under reservation of title and the buyer is obliged to hand them over. If we take back or pledge the reserved goods, this shall not constitute a withdrawal from the contract. In the event we take back the delivered goods, we are entitled to exploit the delivered goods in the best way possible after issuing a prior, appropriate deadline. The proceeds from the exploitation shall be credited to our claims after deducting reasonable exploitation costs.
- 6.8 Upon request by the buyer, we are obliged to release the securities that we are entitled to as the realizable value of our securities that exceeds the claims to be secured by more than 10%. We are responsible for selecting the releasable securities.
- 6.9 The buyer is obliged to adequately insure the goods as long as our reservation of title applies.

7. Tools, forms, patterns

- 7.1 To the extent we must acquire new tools, forms, patterns, etc. to fulfill the buyer's order, these shall become our property. This also applies if the buyer participates in the acquisition costs or even pays for them entirely.
- 7.2 The buyer shall warrant that the proprietary rights of third parties will not be infringed by production and delivery based on his drawings and requirements.
- 7.3 After the conclusion of the buyer's order, the tools, forms, patterns we have acquired upon request of the buyer will be stored free of charge for a period of two years after delivery of the last order. Afterwards, we will request the buyer to pick up the tools, forms, patterns by a certain deadline or send them to the buyer per agreement at the buyer's expense. If the buyer is in default of acceptance, we are entitled to destroy the tools, forms, patterns, etc. and, if applicable, to invoice the buyer for the costs incurred.

8. Notification of defects, claims for defects, period of limitation

- 8.1 If the buyer is a merchant, the assertion of warranty rights is conditional on his having properly complied with his inspection and notification of defects duties pursuant to Section 377 HGB.

For entrepreneurs, this benchmark applies accordingly. The buyer shall promptly notify defects after receiving the goods, but no later than within five calendar days after receipt, if possible in writing. The same period applies to hidden defects as of the date discovered. Claims for defects shall lapse for defects not notified in a timely manner.

- 8.2 We will repair defects in the delivered goods at our discretion or take back the goods and redeliver (subsequent performance). We may refuse subsequent performance if it is possible only with disproportionate costs or dis-proportionate effort and another type of subsequent performance is without substantial disadvantages for the buyer.
- 8.3 If subsequent performance fails or if we re-fuse to do so, the buyer may withdraw from the contract or demand a reduction in the delivery price.
- 8.4 Claims for defects are invalid for defects that represent only an insignificant deviation of the delivered goods from the agreed composition (this applies in particular to unavoidable, minor deviations with respect to color, surface and the material's purity), for defects that represent only an insignificant effect on usability, for natural wear and tear or damage caused after transfer of risk as a result of faulty or negligent handling, excessive stress etc. If the buyer or a third party makes inappropriate changes or performs inappropriate repair work, no claims for defects shall apply to such actions and the resulting consequences.
- 8.5 Since large quantities of our delivered goods are based on weight and technically it cannot be completely guaranteed that no reject parts are included in the delivery, we generally deliver a surplus quantity. For this reason, a surplus or short delivery and/or a small portion of reject parts of a maximum of 5% of the agreed number of items does not constitute a defect. If a demonstrable short delivery has been made, we will provide subsequent delivery of the missing items to the buyer. Thus, a short delivery constitutes a partial delivery to the extent the buyer can be reasonably expected to accept such.
- 8.6 The period of limitations for claims for defects shall be as follows:
- a) for delivery of other new goods to business owners 1 year;
 - b) for delivery of used goods to businesses, liability for defects is excluded.
 - c) the above deadlines do not apply to claims for damages by the buyer arising from injury to life and limb or health or such that are based on intentional or grossly negligent breach of duty by us, our legal representatives or vicarious agents. These claims shall expire pursuant to the statutory provisions.
 - d) Additional statutory special provisions on periods of limitation (in particular Section 438 para. 1 No. 1, para. 3, Sections 444, 445 b BGB) shall remain unaffected.

- 8.7 The period of limitation for claims for defects starts upon delivery of the object; if acceptance is required, as of acceptance.
- 8.8 For replacement delivery and remedying defects, the period of limitation for replaced or repaired goods, to include cases of goodwill, does not start anew. If in exceptional cases, an acknowledgement has been provided, it relates only to those defects that were the object of the demand for subsequent performance.
- 8.9 The periods of limitation under sales law listed under item 8.6 shall also apply to the buyer's contractual and extra-contractual claims for compensation, which are based on a defect in goods, unless the application of the standard statutory period of limitation (Sections 195, 199 BGB) would lead to a shorter period of limitation in an individual case. By contrast, the buyer's claims for compensation pursuant to item 9.2 a) as well as pursuant to the Product Liability Act shall expire exclusively pursuant to the statutory periods of limitation.
- 8.10 The buyer's rights of recourse against us pursuant to Section 478 BGB obtain only to the extent that the buyer has not reached any agreements with his buyer that exceed statutory warranty rights. Item 8.9 applies accordingly to the scope of a right of recourse.
- 9. Other liability**
- 9.1 If no other arrangement is reached in these terms of delivery, including the following provisions, we are liable for the breach of contractual obligations and extra-contractual obligations pursuant to the statutory provisions.
- 9.2 With respect to compensation for damages we are liable – on whatever legal grounds – for fault-based liability in the event of intent and gross negligence. For simple negligence, we are liable, subject to a milder liability benchmark, pursuant to the statutory provisions (e.g. for diligence in one's own affairs) only
- a) for injury to life, limb or health,
 - b) for damage arising from the not insignificant breach of a material contractual obligation (an obligation whose fulfilment makes proper performance of the contract possible in the first place and on the observance of which the contract party routinely trusts or may trust); in this case our liability is limited, however, to compensation for foreseeable and typical damage.
- 9.3 The limits of liability resulting from item 9.2 also apply in the event of breaches of duty by or to the benefit of persons whose fault we are responsible for under statutory regulations. They do not apply if we have maliciously concealed a defect or have given a guarantee of the composition of a product, nor do they apply to claims under the Product Liability Act.

- 9.4 With respect to a breach of duty that does not consist of a defect, the buyer may only withdraw from the contract or terminate it if we are responsible for the breach of duty. A free right to terminate the contract on the part of the buyer (in particular pursuant to Sections 651, 649 BGB) is excluded. The statutory preconditions and legal consequences shall also apply.

10. Data protection

We will process and store the data pertaining to the respective contracts only within the scope of the applicable statutory provisions. The details are provided in the data protection statement available at our website.

11. Legal venue, place of performance and applicable law

- 11.1 Exclusive legal venue for disputes arising between the contract parties is the local court of Rastatt or the state regional court of Baden-Baden, provided the buyer is a merchant, a legal entity under public law or a public law special fund or if the buyer has no general legal venue in Germany. We are also entitled, however, to bring action at the buyer's headquarters or at another legal venue.
- 11.2 If no other arrangement is reached in the order confirmation, our registered office is the place of performance.
- 11.3 The law of the Federal Republic of Germany shall apply exclusively to the legal relationship and as a supplement to these provisions. Application of the UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.

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