

General Terms and Conditions of Business

STADUR
MADE IN GERMANY

General Terms and Conditions of Business

General Terms and Conditions of Business

§ 1 General

1. When the „Purchaser“ is mentioned in the following conditions of supply, performance and payment, our contractual partner is meant. When the „Seller“ is mentioned, we ourselves are meant.
2. These conditions of supply and payment are an integral part of all offers and contracts regarding deliveries of goods and performance of the Seller, including current and future business relationships.
3. Agreements and conditions of business that deviate from these conditions of business are only binding if they are confirmed by the Seller in writing.
4. If some individual provisions of these conditions are or become ineffective, the remaining provisions shall remain effective. If one of the following provisions is null and void, the business that is based on these conditions of business shall not be nullified. The relevant legal regulations apply to the ineffective part of the conditions of business.

§ 2 Offer, delivery times

1. Offers are non-binding and goods may be sold prior to offer acceptance. The Seller is entitled to withdraw from an offer, even if the Purchaser has already accepted it, if it subsequently becomes known to the Seller that the Purchaser is in serious difficulties as regards the ability to make payments.
2. Delivery times are subject to receiving correct and prompt deliveries ourselves, unless the Seller agrees to binding delivery times in writing.
3. Selling prices are only deemed to be fixed prices if the Seller agrees to this in writing.
4. Samples are approximations of the original products as regards quality, dimensions and colour.

§ 3 Delivery, delay or impossibility

1. The loading point is the place of fulfilment for deliveries of the seller; in case of delivery the Purchaser bears the risk. Delivery is effected at the agreed location; the Purchaser shall bear the costs for any changed instructions.
2. Delivery free construction site or free warehouse or store means delivery without unloading, and assumes an access road that may be used by a heavy goods vehicle. If the delivery vehicle leaves the useable access road following instruction from the Purchaser, the Purchaser shall be liable for any damage that occurs. The Purchaser shall unload the goods immediately and correctly. Any waiting times will be charged to the Purchaser.

3. Strikes, industrial conflicts or unforeseeable unusual events such as governmental measures, traffic disturbances etc. fully release the Seller from his delivery obligations for the duration of their effects or in case of impossibility.
4. In case of delayed performance on the part of the Seller or impossibility of performance for which he is responsible, claims for damages on the part of the Purchaser are excluded unless they are based on deliberate intent or gross negligence on the part of the Seller, or a legal representative or vicarious agent of the Seller.
5. If an agreed delivery date or an agreed delivery period is exceeded by more than 2 weeks, the Purchaser is obliged to set the Seller an appropriate time extension which must be at least 2 weeks. This period of extension must be set by means of registered letter. If the obligation to supply the goods is not fulfilled by the end of the time extension, the Purchaser has the right to withdraw from the contract. Notice of the withdrawal must be given in writing immediately following expiry of the statutory period.

§ 4 Payment

1. In the case of cash sale, the purchase price is payable immediately upon receipt of the goods, without deduction.
2. Sale on deferred terms is only possible by separate agreement; invoices relating to such sales are payable 10 days following date of invoice without deduction, unless otherwise agreed in writing.
3. Grant of discounts assumes that the Purchaser's account does not exhibit any other due payments. Only the value of the goods is subject to discount, not the freight costs.
4. Invoice payment by means of cheque or bill of exchange is on account of payment only and requires the agreement of the Seller. Discount, fees and costs shall be paid by the Purchaser.
5. The Seller is entitled to charge interest to a Purchaser who is a merchant in the sense of the German Federal Commercial Code from the due date, and to a purchaser who is not a merchant from default, in the amount of the interest on loans to pay by himself. However, the minimum charged shall be at least 5 % above bank base rate, in each case plus VAT. The Seller retains the right to assert other damages or charges.
6. In case of payment difficulties on the part of the Purchaser, and in particular also in the case of delay of payment, protested cheque or bill of exchange, the Seller is entitled to make further deliveries only against advance payment, to state all open invoiced amounts - including deferred payments - as immediately due and to require cash payment or provision of securities against return of bills of exchange accepted on account of payment.
7. Invoices of the Seller are deemed accepted if no written objection is raised within 30 days of the invoice date. The Seller will inform the Seller to this effect with each invoice.
8. The Purchaser renounces assertion of a right to withhold payment from earlier or other business from the current business relationship. Offsetting of counterclaims is only permissible in so far as these are acknowledged by the Seller and due for payment or are established in law.

§ 5 Complaints, warranty and liability

The obligations of §§ 377 of the German Federal Commercial Code only apply on condition that the Purchaser, who is a merchant in the sense of said Commercial Code, reports in writing all recognisable, and the Purchaser, who is not a merchant, reports all obvious defects, missing quantities and incorrect deliveries within 5 working days of delivery, or in any case certainly before the goods are processed or included into other goods. Any transport damage must be reported immediately to the Seller in writing. In case of delivery by rail, local or long-distance heavy industrial vehicles or by other means of transport, the Purchaser must complete the necessary formalities as regards the haulage contractor. Breakage and loss normal in the trade are excluded from complaints.

1. The following shall apply if the Purchaser is a consumer in the sense of § 13 BGB of the German Federal Civil Code:
 - a) The Seller shall be liable for material defects according to the relevant legal provisions.
 - b) Otherwise the Seller shall also be liable in accordance with the relevant legal provisions, in so far as damage or injury to a person or persons occurs, the damage falls under the German product liability act (ProdHaftG) or is attributable to deliberate intent or gross negligence.
 - c) In so far as the damage is attributable to culpable infringement of a contractual obligation, the Seller shall otherwise only be liable for the damages typical for this type of contract.
 - d) Regardless of the provisions of Letter b) the obligation of the Seller to provide compensation in case of infringement of a pre-contractual obligation or an obstacle to performance already in existence at the time when the contract was concluded (§§ 311 Clause. 2, 311 a BGB) is restricted to placing the Buyer in the position which would have prevailed if he had not placed his faith in the validity of the business (the negative interest).
 - e) Further contractual claims and claims based on tort on the part of the Purchaser are excluded. The Seller therefore in particular does not accept liability for damages that did not come into being in or on the delivered item itself, nor for loss of profit or other damage to the financial or other assets of the Purchaser.
 - f) In so far as the liability of the Seller is excluded and restricted, this also applies with regard to the personal liability of his staff, employees, colleagues, representatives and vicarious agents.
 - g) The claim of the Purchaser to subsequent fulfilment of performance lapses irrespectively § 438 No. 2 BGB in two years following delivery of the goods; in the case of used articles in one year as from delivery. The right to withdraw from the contract or to obtain a reduced price according to legal provisions is correspondingly excluded.
 - h) The right to claim compensation for damages shall lapse after one year, irrespectively § 438 No. 2 BGB.
 - i) The statutory provisions regarding the statutes of limitation still apply for claims arising from the German product liability act (Produkt Haftungsgesetz) and in cases of deliberate intent and gross negligence.
2. The following shall apply if the Purchaser is a businessman in the sense of § 14 BGB:
 - a) The Purchaser cannot draw any further rights from material defects which do not or only slightly reduce the value and the usefulness of the goods for the intended use recognisable by the Seller.
 - b) If the goods exhibit a material defect at the time of transfer of risk, the Seller is entitled and obliged to provide subsequent fulfilment of performance. The Seller is free to select whether this should take the form of rework or substitution. The costs of the subsequent performance, in particular transport costs and toll charges, work and material costs, shall be borne by the Seller. If these costs amount to more than 50 % of the value of the goods delivered, the Seller shall be entitled to refuse to provide subsequent performance.

- c) In so far as the attempt of subsequent fulfilment fails, is not completed by a suitable date set by the Purchaser or if the Seller refuses to provide subsequent fulfilment, the Purchaser is entitled to select between withdrawal from the contract, reduction of the purchase price corresponding to the loss of value caused by the defect or - within the limitation of the following paragraphs - to demand compensation for damages instead of the performance.
- d) If a material defect leads to damage, the Seller shall be liable in accordance with the statutory provisions, in so far as the damage consists of damage to a person or persons, falls under the German product liability act (ProdHaftG) or is based on deliberate intent or gross negligence.
- e) In so far as the damage is attributable to culpable infringement of a major contractual obligation or a „cardinal obligation“, the seller shall incidentally only be liable for the damage that is typical of this type of contract.
- f) Further contractual claims and claims based on tort on the part of the Purchaser are excluded. The Seller therefore in particular does not accept liability for damages that did not come into being in or on the delivered item itself, nor for loss of profit or other damage to the financial or other assets of the Purchaser.
- g) The above provisions do not apply for used goods. In this case the Seller is only liable for material defects if a guarantee has expressly been undertaken or in the case of deliberate intent or gross negligence.
- h) § 478 BGB remains unaffected by Letters a) to g) above. The provisions under a) to g) also apply to claims for compensation regarding other infringements of obligations.
- i) In the case of infringement of a pre-contractual obligation or an obstacle to performance already in existence at the time when the contract was concluded (§§ 311 Clause 2, 311 a BGB) liability is restricted to placing the Buyer in the position which would have prevailed if he had not placed his faith in the validity of the business (the negative interest).
- j) The provisions under Letters a) to g) apply to strict liability in tort of the Seller correspondingly.
- k) In so far as the liability of the Seller is excluded or restricted, this also applies with regard to the personal liability of his staff, employees, colleagues, representatives and vicarious agents.
- l) The purchaser's claims for compensation of damages and subsequent performance lapse one year after delivery of the goods, subject to §§ 438 No. 2 and § 479 BGB (German Civil Code). The right to withdraw from the contract and to obtain a reduced price according to legal provisions is correspondingly excluded.
- m) The statutory provisions regarding the statutes of limitation still apply for claims arising from the German product liability act (Produkt Haftungsgesetz) and in cases of deliberate intent and gross negligence.
- n) If the seller cannot deliver at all, or cannot deliver promptly, properly or free from defects because a supplier to the seller did not deliver at all or did not deliver promptly, properly or free from defects, then the seller is freed from all liability with respect to the buyer. The buyer is not entitled to any compensation for damages whatsoever, regardless of whether the damage is direct or indirect.

§ 6 Application technology notes

The instructions for use, the installation and processing guidelines as well as the Seller's product or service data are only general guidelines; they describe only the properties of the Seller's products and services and do not constitute a guarantee in the sense of paragraph 443 BGB (German Civil Code). Due to the variety of intended uses of the individual product and due to the respective special conditions, it is incumbent on the Purchaser to carry out his own testing. Even if the Seller provides the Purchaser with application support, the Purchaser bears the risk of the success of his work alone. This does not exclude possible claims on the part of the Purchaser against the Seller in accordance with paragraph 5.

§ 7 Retention of title

1. The goods supplied remain the property of the seller in the form of goods subject to retention of title until the purchase price has been paid and all receivables from the business relationship and any receivables still to arise in connection with the purchased item have been settled. Comprising an individual receivable into a current invoice or striking a balance and subsequently agreeing do not revoke the retention of title. If, in connection with the payment of the purchase price by the Purchaser, liability arises with regard to a bill of exchange, the retention of title shall not be revoked prior to redemption of the bill of exchange by the Purchaser. In case of delay in payment on the part of the Purchaser, the Seller is entitled to take back the goods subject to retention of title, and the Purchaser is obliged to handover them to the Seller.
2. If goods subject to retention of title are processed into a new moveable object, the processing is performed on behalf of the Seller, without obligations accruing to the Seller as a result; the new goods become the property of the Seller. If the goods subject to retention of title are processed along with goods that do not belong to the Seller, the Seller acquires joint ownership of the new item according to the relationship of the value of the goods subject to retention of title to the other goods at the time of processing. If goods subject to retention of title are combined with goods not belonging to the seller according to §§ 947, 948 of the German Federal Civil Code the Seller becomes a joint owner in accordance with the statutory provisions. If the Purchaser acquires sole ownership through connection, mixing or blending, he already now transfers joint ownership to the Seller according to the relationship between the value of the goods subject to retention of title and the other goods at the time of the connection, mixing or blending. In these cases, the Purchaser shall store the item which is the property or joint property of the Seller, which is also deemed to be goods subject to retention of title in the sense of the following provisions, free of charge.
3. If goods subject to retention of title are sold along or together with goods that do not belong to the Seller, the Purchaser already now assigns his claims arising from the onward sale to the Seller in the amount of the value of the goods subject to retention of title, with all ancillary rights and with first priority before other claims; the Seller accepts this assignment of claims. The value of the goods subject to retention of title is the invoiced amount of the Seller plus a security supplement of 10 %, which, however, remains inapplicable if contradicted by rights of third parties. If the goods subject to retention of title that have been sold on are the joint property of the Seller, the assignment of the claims extends to the amount that corresponds to the value of the goods owned by the Seller.
Paragraph 1 Sentence 2 applies correspondingly for time-extended retention of title, advance renunciation in accordance with Paragraph 3 Sentence 1 and 3 also extends to receivables from the balance of the account.
4. If goods of the Purchaser subject to retention of title are built into the site of a third party as a major component, the Purchaser already now assigns to the Seller the claims to payment arising against the third party or the affected party in the amount of the value of the goods subject to retention of title with all ancillary rights, including the right to arrange an equitable mortgage, with priority before other claims; the Seller accepts the assignment. Para. 3 Sentence 2 and 3 apply correspondingly.
5. If goods of the Purchaser subject to retention of title are built into the site of a third party as a major component, the Purchaser already now assigns the claims from commercial sale of the site or rights associated with the site in the amount of the value of the goods subject to retention of title with all ancillary rights, with priority before other claims; the Seller accepts the assignment. Para. 3 Sentences 2 and 3 apply correspondingly.

6. If goods of the Purchaser subject to retention of title are built into the site of a third party as a major component, the Purchaser already now assigns the claims from commercial sale of the site or rights associated with the site in the amount of the value of the goods subject to retention of title with all ancillary rights, with priority before other claims; the Seller accepts the assignment. Para. 3 Sentences 2 and 3 apply correspondingly.

7. Subject to cancellation, the Seller authorises the Purchaser to directly debit the claims assigned in accordance with Paras. 3,4, and 5. The Seller will not make use of his authority to directly debit the claims as long as the Purchaser fulfils his payment obligations, including as regards third parties. Upon request of the Seller, the Purchaser must name the debtors as regards the assigned claims to the Seller and give notice of the assignment of the claims to said debtors; the Seller is also entitled to notify the debtors of the assignment of the claims himself.

8. The Purchaser must inform the Seller immediately of any compulsory enforcement measures of third parties in relation to the goods subject to retention of title or in relation to the assigned claims, and must at the same time supply the documents necessary in order to object to the measures to the Seller without delay.

9. The right to sell on the goods subject to retention of title, to use them or to include them in a different item and also the authority to collect the assigned claims, lapse in case of cessation of payment, application for or opening of insolvency or bankruptcy proceedings or of court or out-of-court settlement proceedings; the authority to collect the assigned claims also lapses in the case of protested cheque or bill of exchange.

10. If the value of the securities provided exceeds the value of the claims by more than 20 %, the Seller is obliged to transfer back the securities or release them according to his choice. When all receivables of the Seller from the business relationship have been settled, the ownership of the goods subject to retention of title and the assigned claims pass to the Purchaser.

§ 8 Labelling

The permission of the Seller is required in order to apply labelling or names that could create the impression that the goods were supplied by a different person or company than that of the Seller to the products manufactured by the Seller.

§ 9 Legal venue

1. If the prerequisites for agreement of a legal venue in accordance with § 38 of the German Code of Civil Procedure are present, the legal venue for all claims of the contractual parties, including complaints and charges in connection with bills of exchange and cheques, is Stade (Germany).

2. The rights of the Purchaser from this contract are non-transferable.

Issue: January 2014

Contact.

Stadur Produktions GmbH & Co. KG
Ostereichen 2-4,
21714 Hammah, Germany

Telefon +49 (0) 41 44 / 234-0
Telefax +49 (0) 41 44 / 234-100
E-Mail stadur@stadur.com
Internet www.stadur.com

STADUR
MADE IN GERMANY