

# General Terms and Conditions of Trade

## Section 1 General remarks – Scope of application

- (1) Our terms for the sale of goods shall apply exclusively. Unless we have explicitly agreed to their application in writing beforehand, we will not accept any of the purchaser's terms or conditions that conflict with our conditions of sale. Our terms for the sale of goods shall also apply unconditionally when we make a delivery to the purchaser while aware of the purchaser's terms for the sale of goods that conflict with or deviate from our conditions.
- (2) All arrangements made between us and the purchaser concerning the implementation of this agreement have been put in writing in this agreement.
- (3) Our terms for the sale of goods only apply for enterprises within the meaning of Section 24 GTCT Act (AGBG).

## Section 2 Offer

If an order is evident as being an offer pursuant to Section 145 Civil Code BGB, we may accept it within one week.

## Section 3 – Payment terms

- (1) Insofar as nothing else is stated in the order confirmation, our prices are "ex works" prices.
- (2) Our prices do not include the statutory value added tax, whereby this amount will be shown separately in the statutory amount on the day of the invoicing.
- (3) A discount for early payment must be arranged separately in writing.
- (4) Unless stated otherwise in the order confirmation, the purchase price will become due net (without a deduction) within 14 days of the invoice date. Should the purchaser default on the payment, we may charge 4% above the respective official basic interest rate p.a. We may demand this amount if we are able to prove a higher damage for delayed payment. The purchaser may however prove to us that no damage or a significantly lower damage has occurred through the delay in payment.
- (5) The purchaser may only offset payments with his legally established and undisputed counter claims, or when we have accepted these. He may furthermore only exercise a right of retention when his counter claim results from the same contractual relationship.

## Section 4 Delivery period

- (1) To comply with our delivery obligations, the purchaser must also fulfil his duties in a timely and correct manner. The defence of the unfulfilled agreement remains reserved.
- (2) If the purchaser defaults on his acceptance duty or if he violates any other cooperation duties, we may demand that the damage suffered by us, including any possible extra expenses, be replaced. Further claims remain reserved.
- (3) Insofar as the conditions of Section 3 exist, the purchaser is liable for the danger of an accidental destruction or an accidental deterioration of the purchased item at the time when he has defaulted on his duty of accepting or paying for the purchased item.
- (4) We are liable according to legal requirements insofar as the underlying purchase agreement sets a last-delay date according to Section 376 Civil Code BGB. We are also liable according to

statutory regulations if as a consequence of a delayed delivery on our part the purchaser may assert that he is no longer interested in a further fulfilment of the agreement.

- (5) We are liable according to legal requirements insofar as the delayed delivery has been caused by an intentional or a gross negligent breach of the agreement on our part, whereby the culpability of our representatives or vicarious agents shall be ascribed to us. Insofar as the breach of the delivery agreement has not been caused by an intentional act on our part, our liability for damages will be limited to foreseeable and typically occurring damage.
- (6) We are also liable according to statutory regulations insofar as the delivery delay caused by us results from a culpable breach of an essential contractual duty. In such a case the liability for damage will however be limited to foreseeable and typically occurring damage.

#### Section 5 Passing of risk – Packing costs – Packaging

- (1) Unless stated otherwise in the order confirmation, deliveries will be agreed upon as being “ex works”.
- (2) We will not take back transport packaging and all other packaging complying with packaging regulations. The purchaser shall ensure for a disposal of the packaging material at his expense.
- (3) Insofar as this has been requested by the purchaser, we will cover the delivery through transport insurance, whereby any costs incurred hereby will be borne by the purchaser.
- (4) Production racks will at all times remain our property and will only be provided to the customer for his production purposes; Section 8 of these sales terms does not apply in this case. Individual delivery agreements will contain additional regulations for the racks.

#### Section 6 Liability for defects

- (1) The purchaser’s warranty rights require him to correctly fulfil his inspection and objection duties pursuant to Sections 377, 378 Commercial Code (HGB).
- (2) Insofar as the purchased item contains a fault for which we are responsible, we may at our discretion remove the fault or make a replacement delivery. If we decide to remove the fault we will bear the necessary costs, in particular the transport, commuting, labour and material costs insofar as these are not increased by the purchased item having been sent to a location other than the place of fulfilment.
- (3) If a removal of the fault or a replacement of the delivered item should prove unsuccessful, the purchaser may choose to rescind the purchase (cancel the agreement) or demand an equivalent reduction of the purchase price (price reduction). Insofar as the purchased item lacks an assured quality, we will be liable for non-fulfilment pursuant to the provisions of Sections 463, 480 Subsection 2 Civil Code BGB.
- (4) We are liable according to legal requirements insofar as the purchaser asserts claims for damages because of intention or gross negligence, including intention or gross negligence on the part of our representatives or vicarious agents. Insofar as we are not being charged with intentionally violating the agreement, claims for damages will be limited to foreseeable and typically occurring damages.
- (5) We are liable according to statutory regulations insofar as we have culpably breached an essential duty of the agreement, whereby in such a case the liability will be limited to foreseeable and typically occurring damage.
- (6) Apart from that, the payment of damages is excluded, and in this respect we are in particular not liable for damages that have not arisen to the delivered item itself.
- (7) The mandatory regulations of the product liability law remain unaffected hereby.

- (8) Our warranty obligation applies for six months as from the passing of risk. This period is not a limitation period; it also applies to replacement claims for damage caused by a defective product insofar as no claims are being asserted for tort where the statutory period of limitation shall apply.

#### Section 7 Total liability

- (1) Irrespective of the legal nature of an asserted claim, any liability for damages exceeding Section 6 is excluded. This especially applies to claims for damages arising from culpability during the conclusion of the agreement, a positive breach of the agreement, or to tortuous claims pursuant to Section 823 Civil Code BGB.
- (2) Claims for damages through impossibility or inability remain unaffected.
- (3) The same also applies insofar as the liability is mandatory according to the provisions of the product liability law.
- (4) Insofar as liability for damage towards us has been excluded or limited, this also applies with regard to personal liability for damage through our staff and employees or our representatives and vicarious agents.

#### Section 8 Reservation of title clause

- (1) We reserve the title to the purchased item until all payments have been received that have arisen from the business relationship with the purchaser. In the event of the purchaser's repudiatory conduct, in particular with regard to a default in payment, we may take the purchased item back. When we take back the purchased item this does not constitute a withdrawal from the agreement unless we have explicitly stated this in writing. Whenever we attach a purchased item, this also means that we have withdrawn from the agreement. After having taken back a purchased item we may exploit it, whereby the proceeds from the exploitation shall be offset against the purchaser's liability with a reasonable amount being deducted for the liquidation costs.
- (2) The purchaser shall handle the purchased item with care; in particular he must insure these items sufficiently at their replacement value against damage by fire, water and theft. Insofar as maintenance and inspection work is required, the purchaser must perform this work in a timely manner at his own expense.
- (3) In the event of pledging or other interventions by a third party, the purchaser must immediately inform us in writing so that we can take legal action pursuant to Section 771 civil procedure rules ZPO. Insofar as the third party is unable to repay the court and the out-of-court costs of a lawsuit according to Section 771 civil procedure rules ZPO, the purchaser will be liable towards us for the resulting deficit to us.
- (4) The purchaser may resell the purchased item in the normal course of business. He shall however already now assign to us all claims in the final amount of the invoice (including the VAT) of our debt claim accruing to him from the resale against his customer or a third party irrespective of whether the purchased item has been resold without or after having been processed. The purchaser will still be authorised to collect this claim even after the item has been assigned. Our authorisation to collect this claim ourselves remains unaffected hereby. We will however not collect the claim as long as the purchaser meets his payment obligations from the generated proceeds, does not default on his payments and, in particular, does not apply for the initiation of bankruptcy or arrangement or insolvency proceedings, or has not suspended his payments.
- (5) If this is the case, we may demand that the purchaser notifies us of the assigned claims and their debtors, that he provides us with all the information required to collect these, and that

he surrenders the accompanying documents and notifies the debtors (third parties) about the assignment of the claims. The processing or transformation of the purchased item by the purchaser will always take place on our behalf. If the purchased item is being processed together with other items that do not belong to us, we will then acquire a joint ownership in the new item in proportion to the value of the purchased item (final invoiced amount including VAT) to the other items at the time of the processing, whereby this shall furthermore apply to the item being formed as to the purchased item delivered under reserve.

- (6) If the purchased item is being mixed inseparably together with other items which do not belong to us, we will then acquire a joint ownership in the new item in proportion to the value of the purchased item (final invoiced amount including VAT) to the other items at the time of the mixing. If the mixing is being carried out in a manner that the purchaser's item is considered as being the main item, it shall then be agreed that the purchaser shall transfer a proportionate joint ownership to us. The purchaser will then retain the sole ownership or joint ownership created in this manner on our behalf.
- (7) Should the purchaser separate the fruits of the purchased item from this, the reservation of title arranged here shall be extended to these.
- (8) The purchaser shall also assign to us the claims for securing our claims against him that arise against a third party through the connection of the purchased item to a property.
- (9) Upon demand of the purchaser, we shall release the securities to which we have a claim insofar as the realised value of our security exceeds the claims being secured by more than 10%, whereby we shall choose the securities being released.

#### Section 9 Choice of law – Place of jurisdiction – Place of fulfilment

- (1) Insofar as the purchaser is a registered trader, our place of business is also the place of jurisdiction.
- (2) Unless stated otherwise in the order confirmation, our place of business is also the place of fulfilment.

Pilzhof Pilzsubstrat Wallhausen GmbH  
Wallhausen, July 1<sup>st</sup> 2022