

## Sales and Delivery Terms

### Fritz Pauker Ingenieure GmbH, Friedberg

#### 1.0. General

- 1.1. Unless otherwise agreed upon in writing, the following sales and delivery terms apply to our deliveries exclusively. Conflicting terms and conditions of the customer are not accepted.
- 1.2. In the context of current business relations our sales and delivery terms also apply to all future deliveries and services, even if they are not agreed on explicitly in each individual case.
- 1.3. We are authorized to secure the concluded business transaction by means of credit insurance and to transmit any required data to the insurance provider.

#### 2.0. Offer, conclusion of contract

- 2.1. Our offers are subject to change and are merely to be understood as a request for the placing of an order. Without date the offer remains valid for 4 weeks.
- 2.2. The specifications regarding measurements, weights, services and the like in catalogues, brochures, circulars, advertisements, images, and other documents are only roughly authoritative, unless they are an integral part of our offer and have been explicitly confirmed by us as binding. A suitability of our materials for certain usages (particularly in the technical area) is not assured beyond our offer.
- 2.3. We reserve improvements and changes differing from offers and brochures, which do not affect the purpose of the contract and are deemed reasonable for the customer.
- 2.4. The contract is concluded only by the written order confirmation or by the execution, depending on which event occurs first.

#### 3.0. Price

- 3.1. Orders for which no prices are agreed upon are charged according to the list prices valid at the date of delivery and the actual accrued materials and work hours.
- 3.2. Our prices for deliveries, unless otherwise agreed upon in writing, are understood ex Friedberg. Packing and transport costs are calculated separately. Prices are net prices excluding V.A.T.

#### 4.0. Payment, delay, contractual exclusion of set-off

- 4.1. Cheques will be accepted only on account of performance. Payments by cheque will only be considered fulfilled after unreserved crediting of the cheque.
- 4.2. Discounts or cash discounts may only be deducted if preliminarily agreed upon in writing. A cash discount presupposes that all payments were credited to our account within the cash discount period.
- 4.3. If the customer is in delay with payment, we shall be entitled to charge default interest in the amount of 5% above the basic interest rate according to the *Diskontüberleitungsgesetz* (Discount Rate Transition Law), but of a minimum amount of at least 5% p.a. The buyer is at liberty to prove that no or substantially lower interest damage occurred. Our claims to replacement of actual higher damages remain untouched.
- 4.4. An offsetting is possible only on the basis of statutory legal claims of the customer or claims accepted by us. Retention is reserved; retention on the basis of faults or on the basis of the objection of an unfulfilled contract is only permissible when the defect etc. is accepted by us or an improvement is impossible.
- 4.5. Should we receive credible knowledge of the customer being in an unfavorable financial situation or of the considerable deterioration of the customer's pecuniary circumstances after the conclusion of the contract, we can refuse the services incumbent upon us until the counter performance or a security has been rendered.

#### 5.0. Delivery dates, delivery period, delayed delivery

- 5.1. Delivery terms shall be extended appropriately in case of a force majeure or unforeseeable obstacles (especially in the case of development orders) which are outside our realm of influence. This also applies if these circumstances lie with sub-suppliers. A delayed delivery of raw materials and vendor parts that we are not responsible for also leads to an appropriate extension of the delivery period.
- 5.2. Partial deliveries are permitted.

#### 6.0. Call orders, custom-made products

- 6.1. In case of call orders for specific quantities we reserve the right to obtain the material for the complete order and to produce the complete order immediately. Possible requests for changes by the customer cannot be considered after placement of the order, unless the customer explicitly reserved the right to such a change.
- 6.2. Unless otherwise agreed upon, the customer is obliged to call the quantity agreed upon within 12 months in case of call orders.

#### 7.0. Dispatch and passing of risk

- 7.1. The choice of the dispatch route, the mode of dispatch, as well as the carrier is up to us provided that no explicit agreements have been made. We are not liable for the cheapest dispatch.
- 7.2. The risk passes on to the customer according to the regulations of the contract of sale involving the carriage of goods.
- 7.3. If the customer falls behind regarding the acceptance of the service or does not call the ordered goods despite communication of the dispatch readiness and a grace period notification, he becomes responsible for replacing all costs and damages resulting from the delay. In this case, the risk is passed on with the notification of delivery readiness. In case of acceptance delay as well as in other cases in which we have to store the goods to be delivered due to the behavior of the customer, the respective requirement of law is due within 14 days after occurrence of default.

#### 8.0. Warranty

- 8.1. We grant freedom from defects of construction and material corresponding to the respective level of technological development, as well as production according to the technical norms valid in the FRG.
- 8.2. As warranted feature counts only what was warranted by us in written form and explicitly with the will to accept liability.

#### 9.0. Notice of defects

- 9.1. The customer is obliged to check the goods delivered by us immediately after receipt of the delivery and to notify us of possible obvious defects or missing quantities within 10 days. When refraining from a written notice of defects the goods are regarded as approved.

- 9.2. If the customer is a merchant, he is obliged to also reprehend non-obvious defects immediately after discovery.

#### 10.0. Warranty rights

- 10.1. In case of the occurrence of defects or in the case of missing warranted features we are obliged and authorized to subsequent improvement. Apart from this we can also opt for replacement deliveries; the customer is not entitled to request replacement delivery. Only if we are not able to provide a subsequent improvement, several tries at subsequent improvement were unsuccessful, or if the subsequent improvement of the replacement delivery is not carried out, the customer is entitled to request a conversion or diminution. The replacement delivery has to be carried out within an appropriate period under consideration of mutual interests.
- 10.2. As far as nothing else results hereafter, further claims of the customer are excluded independent of the cause in law. We therefore are not liable for damages that did not occur on the delivered good itself; we especially are not liable for lost profits or other financial losses of the customer.
- 10.3. The preceding exemption of liability does not apply if the cause of damages is due to intent or gross negligence.
- 10.4. Provided that we negligently breach a contract legal duty, our obligation to pay compensation for property or personal damages is restricted to the limit of indemnity of our product liability insurance. We are prepared to grant the customer inspection of our policy upon request.
- 10.5. The warranty period is 12 months, starting with the date of the transfer of risk. This period is a limitation period.

#### 11.0. Joint liability

- 11.1. Further liability for damages is excluded without consideration of the legal nature of the asserted claim.
- 11.2. If our liability is excluded or restricted due to the previous regulations, this also applies to the personal liability of our employees, jobholders, staff, representatives, and vicarious agents.

#### 12.0. Retention of title

- 12.1. We reserve the right to the title of the goods delivered until complete fulfillment of all claims resulting from the business relation between us and the customer. The placement of individual claims into a current invoice as well as the balancing and the acceptance thereof do not affect the retention of title.
- 12.2. The customer is entitled to the resale of the goods subjected to the retention of title in the context of usual business dealings; he may not, however, pledge them or transfer them by way of security. In case of pledging or transfer by way of security of the remainder the customer has to inform the secured party of our ownership and immediately inform us about the pledge or the transfer by way of security. The customer is obliged to secure our rights in the case of the resale of goods subjected to the retention of title on credit, especially to pass on the retention of title.
- 12.3. With acceptance of these terms, the customer assigns claims resulting from resale of the reserve goods in the amount of the invoice to us; we accept the assignment. If a subrogation is not possible due to the agreement made in the case of resale, the customer is only permitted to the resale of the reserve goods in case of explicit written consent. This applies also if the claim from the resale is to be included in a current invoice. Independent of whether the resale is illegal in this case or occurs with our consent, the customer already now assigns his claim of a balance in the amount of the invoice value to us.
- 12.4. Notwithstanding the assignment and our collection right, the customer is entitled to the collection as long as he meets his obligations and is not subject to a financial collapse. In case of a significant deterioration of the financial situation of the customer, the collection right is voided. A significant deterioration of the financial situation is irrefutably assumed for the last few days prior to a stoppage of payments or prior to the application for the institution of bankruptcy or insolvency proceedings. Upon our request, the customer is obligated to disclose all information needed to ensure collection and to notify the debtor about the transfer. Upon our request the customer is obliged to hand over a notice of assignment signed by him, i.e. even if he himself is entitled to collection.
- 12.5. The customer carries out possible treatment and processing of the reserve goods for us without any arising obligations for us. If the contract item is processed with other subjects not belonging to us, we acquire joint ownership of the new goods in the relation of the amount of the invoice of the reserve goods to the other processed subjects at the time of processing or amalgamation. If the customer receives the sole ownership of the new subject, the contractual parties already now agree that the customer grants us joint ownership of the treated or amalgamated reserve goods in relation of the invoice value; storage of this new subject free of cost for us by the customer is already agreed upon now.
- 12.6. If the reserve goods are resold together with other goods, the assignment in advance, agreed on above, is only valid in the amount of the invoice value of the reserve goods, which are resold together with the other goods. This applies regardless of whether the resale took place without or after the processing or amalgamation.
- 12.7. The customer is obliged to insure goods delivered under retention of title against fire and water damages until the full acquisition of ownership, as well as to prove upon request, that this has occurred.
- 12.8. We are obliged to release securities if and as far as the sum of the securities granted by the customer exceeds the total receivables resulting from the business relation by 20% and the customer requires it.

#### 13.0. Prototype deliveries

- 13.1. Deliveries of prototypes are explicitly marked as such.
- 13.2. Prototypes are not meant to remain with the customer, but are to be returned to us in an original state latest 4 weeks after the sending date. We are permitted to refuse the re-acceptance of the prototypes that do not meet these requirements.
- 13.3. In the case of a justifiable denial of the re-acceptance, or in the case that the customer wants to keep the prototypes, we are authorized to bill the list price valid at the date of delivery.

#### 14.0. Place of performance, place of jurisdiction, applicable law

- 14.1. Place of performance for all claims and legal disputes is Augsburg, Germany.
- 14.2. Considering the mutual privity of contract, exclusively the law of the Federal Republic of Germany is applied.