

General Terms and Conditions of Sale for Business Customers

§ 1 General

- (1) All deliveries, services and offers by the Thurner GmbH (hereinafter also referred to as "Seller") for sales contracts and/or deliveries over mobile things (hereinafter also referred to as "Goods"), regardless of whether we produce the Goods ourselves or procure them from the suppliers (Sec. 433 and 651 of the German Civil Code), shall be governed exclusively by these general terms and conditions of sale (hereinafter also referred to as „General Terms and Conditions of Sale“). These General Terms and Conditions of Sale will be part of all contracts into that the seller enters over his goods or services with its business partners, insofar as it concerns entrepreneurs, legal persons under public law or public law special assets (hereinafter also referred to as "Customer").
- (2) We hereby object to any counter confirmation, counter offer or other reference by the Customer to its general terms and conditions; any dissenting terms and conditions of the Customer shall only apply if we have confirmed the same in writing.
- (3) The Customer may not assign any claims arising from transactions with us without our written approval.

§ 2 Offers; Orders

- (1) All offers of the Seller shall not be binding and are subject to change unless they are explicitly designated as binding or contain a certain acceptance period. This shall apply even if we have supplied the Customer with catalogues, technical documentation (such as drawings, plans, calculations, costings and references to DIN standards), other product descriptions or documents including in electronic form - in which we reserve ownership and copyright.
- (2) The order for the goods placed by the Customer shall be deemed a binding offer to enter into a contract. Insofar as not otherwise derived from the order we are entitled to accept this contractual offer within two weeks after its receipt by us.
- (3) The Seller's acceptance of an order shall be indicated either in writing, per facsimile or per e-mail or through the supply of goods to the Customer.

§ 3 Prices

- (1) If in a particular case not otherwise agreed, our prices valid at the time of concluding the contract, namely prices from stock, plus. statutory VAT, apply.
- (2) The Customer pays for the cost of carriage ex warehouse and if requested by the Customer the cost of any transport insurance desired by the Customer. Any customs duties, fees, taxes and other public charges shall be paid by the Customer. We will not take back transport - and other packing material; the Customer acquires the property thereof, with the exclusion of euro-pallets.

§ 4 Warranty

- (1) Precondition for any warranty claim of the Customer is his full compliance with all requirements regarding inspection and objection established by the law and sec. 6 of these General Terms and Conditions of Sale.
- (2) Any claim that is based on liabilities (either contractual liabilities or liabilities because of defects of material) become time-barred one year after the risk has been transferred, unless a longer warranty period has been mandated by law, particularly Sec. 438 (1) No. 2 of the German Civil Code (buildings and material of buildings), Sec. 479 of the German Civil Code (recourse action) and Sec. 634a (1) No. 2 of the German Civil Code (defects of buildings). An additional guarantee for the goods delivered by the seller exists only if it has been explicitly stated in the order confirmation of the respective products.
- (3) Insignificant reasonable deviations regarding dimensions and workmanship (color and structure), insofar as these are in the nature of the used materials, in particular any changes in color and texture

on the surface of the ceramic plates that may occur due to the production or fire method, are reserved and are not cause for a defect claim.

§ 5 Delivery, dispatch, transfer of risk

- (1) The delivery time is agreed upon individually and respectively stated by us at acceptance of the order. Delivery is ex warehouse and this is also the place of performance. At the request and expense of the Customer, the goods are shipped to another destination. The goods shall be transported uninsured at the expense and in any event at the risk of the Customer. This shall also apply to deliveries with carriage paid and irrespective of the means of transport used. Transport insurance shall only be arranged on the Customer's express wish and at his expense. Any costs arising therefrom shall be at the expense of the Customer only.
- (2) Unless agreed otherwise in writing, the choice of the place of shipment and the way and means of transport is in Seller's best discretion, without acceptance of any liability for cheapest or fastest transport.
- (3) Should the Customer provide the means of transport, so he shall be responsible for its timely provision. We shall be notified of any possible delay in due time. The Customer shall assume costs incurred due to refusal to take delivery.
- (4) We shall have the right to reasonable delivery in instalments insofar as the deliveries are reasonable for the Customer.
- (5) Insofar as we cannot observe binding delivery deadlines for reasons for which we are not responsible (non-availability of the goods and services), we shall inform the Customer hereof immediately and at the same time inform it of the expected, new delivery deadline. Where the goods or services are not available by the new delivery date, we shall be entitled to rescind the contract in whole or in part; in this case, we shall refund, without undue delay, any payments already made by the Customer. A case of non-availability of any good or service within the meaning of this clause is, in particular, our supplier's failure to supply us in good time if we have entered into a congruent covering transaction, neither we nor our supplier is at fault, or we were not obliged to procurement in the individual case.
- (6) Any inability to supply as a result of force majeure or other unforeseen incidents outside our responsibility, including breakdowns, strike, lock out, acts of public authorities, subsequent cease of export or import opportunities shall, for their duration and in accordance with their impact, relieve us from the obligation to comply with any agreed time for delivery and unloading. They give us the right to also withdraw from the contract without the Customer thus being entitled to claims for damage or any other claims.
- (7) The occurrence of default in delivery shall be determined by the provisions of law. In each case, however, a reminder is required from the Customer. If a stipulated delivery or unloading deadline is not met even though there is no reason as specified in subsection 6 above to prevent meeting said deadline, the Customer shall grant us in written a grace period of at least two weeks. If we culpably do not comply with this grace period then the Customer shall be authorized to withdraw from the contract as well to enforce claims for damages arising from non-fulfillment or default in accordance with § 7 of these General Conditions of Sale.
- (8) The risk of accidental loss or accidental impairment shall be transferred to the Customer at the latest with the handing over to the Customer. In the event of sale to destination, however, the risk of accidental loss and accidental deterioration of goods as well as risk of delay is already transferred when the goods are handed to the carrier, forwarder or the person or organization charged with carriage of the goods. If an acceptance procedure has been agreed on, this is authoritative for the passing of risk. The statutory provisions of the law on contracts for services shall apply accordingly to an agreed acceptance. It is deemed equivalent to the handover or acceptance if the Customer is in default with the acceptance.

§ 6 Duty to Inspection and Objection

- (1) Warranty claims of the Customer presuppose that the latter has properly fulfilled his obligations to inspect and make a complaint (Sec. 377, 381 of the German Commercial Code).

- (2) The Customer is obliged to inspect the goods upon delivery at the agreed destination or in the case of collection by the Customer at their acquisition immediately. If a defect is determined during the inspection or subsequently then this is to be reported to us immediately in writing. The report is deemed as immediately if it reaches us within seven working days. Irrespective of this obligation for inspection and reporting of complaints the Customer must report obvious defects (including false and shortfall in delivery) in writing within seven working days from delivery. If the Customer fails to carry out the proper inspection and/or report of defects our liability for the defect which was not reported is excluded.
- (3) In the case that the delivered item is faulty, we may elect first either repair of the fault (rectification) or delivery of the flawless item (replacement), as he chooses. Our right to refuse the subsequent performance according to the legal conditions remains unaffected.
- (4) We are entitled to make the owed subsequent performance dependent on the fact that the Customer pays the due purchase price. The Customer is however entitled to retain a part of the purchase price which is reasonable in the ratio to the defect.
- (5) The Customer has the duty to give us the time and occasion for the subsequent performance owed, especially to hand over the faulty goods for inspection reasons. In the event of the substitute delivery the Customer must return the faulty object to us according to the statutory regulations. Subsequent performance entails neither the extension of the defective goods nor the reinstallation, if we were not initially committed for installation.
- (6) The expenses which are necessary for the purpose of inspection and subsequent performance, in particular transport, route, work and material costs (not deinstallation and installation costs) shall be borne by us if there is actually a defect. However, should a customer demand for repair be proven unjustified, then we can demand the incurred costs be reimbursed by the Customer.
- (7) In urgent cases (in particular, when the operational safety is at risk, or to prevent extraordinarily large damage), the Customer has the right to remedy the defect himself and demand reimbursement of these objectively necessary expenses. We shall be advised without delay, if possible beforehand, of self-remedying of defects. The right to self-action does not exist if, according to legal stipulations, we would have been entitled to refuse supplementary performance.
- (8) If the subsequent performance has failed or a reasonable deadline which is to be set by the Customer for the subsequent performance has expired unsuccessfully or it is dispensable according to the statutory regulations the Customer can cancel the purchase contract or reduce the purchase price. This right of withdrawal does not exist with an insignificant defect.
- (9) Claims of the Customer for damages or compensation of wasted expenses shall only exist in accordance with § 7 of these General Conditions of Sale, and shall otherwise be excluded.

§ 7 Limitation of Liability

- (1) Unless otherwise provided in these Terms and Conditions of Sale including the provisions set out below, we shall be liable for any breach of contractual and non-contractual obligations under the relevant statutory provisions.
- (2) Irrespective of the cause in law we are only liable for damages in case of intent or gross negligence. In cases of minor negligence we are only liable: a) for damage resulting from death, physical injury or harm to human health; b) for damage resulting from the breach of the essential contractual obligation (an obligation whose proper fulfillment makes fulfillment of the agreement possible at all and of whose observance the contractual party regularly relies and may rely); in this case, our liability is restricted to foreseeable and typically occurring damage.
- (3) The liability restrictions which can be derived from Par. 2 shall apply to the infringements of obligations by persons for whose behavior we are responsible. They do not apply insofar as we have maliciously failed to disclose a defect or have assumed a guarantee for the condition of the goods. The same applies to the Customer's claims under product liability legislation.
- (4) The Customer can only withdraw or terminate because of the violation of an obligation which is not a defect if we are responsible for the violation of the obligation. A free right of termination of the Customer (in particular according to Sec. 651, 649 of the German Civil Code) is excluded. Otherwise the statutory conditions and consequences are applicable.

§ 8 Terms of Payment

- (1) Invoices are to be paid within fourteen days without deduction unless other payment terms shall have been agreed. The date of payment shall be the date of receipt by the Seller. However we are entitled, even in the ongoing business relationship, to effect deliveries completely or in part only against advance payment. We will declare a corresponding reservation at the latest with the confirmation of order.
- (2) If the Customer does not pay at maturity, we are entitled to charge default interest in the amount of 9 % above the respective base interest rate. The assertion of damages going beyond such late payment damages shall be reserved.
- (3) If there are indications after conclusion of the contract that our entitlement to the purchase price is at risk through insufficient ability of the Customer to pay (e.g. by an application for opening of insolvency proceedings) then according to the statutory regulations we are entitled to refuse our performance and – if applicable after setting a deadline – to withdraw from the contract (Sec. 321 of the German Civil Code). In the case of contracts for the manufacture of specific items (making to specification) we can withdraw immediately; this shall not affect the legal provisions concerning dispensability of setting a time limit.
- (4) The buyer is only authorized to offset, to hold back or to reduce payments if the counterclaims have been legally established or have been expressly recognized by us.

§ 9 Retention of Title

- (1) We reserve the right to the property of the sold goods until the full payment of all of our current and future claims from the purchase contract and a current business relationship (secured claims).
- (2) Prior to complete payment of the secured claims, the goods for which ownership is reserved can neither be pledged nor assigned by way of security to third parties. The Customer has to inform us immediately and in writing in case of any accesses of third parties to the goods which belong to us.
- (3) In the case of non-compliance to the contract on the part of the Customer, in particular in case of payment delay, we are entitled, under the statutory provisions, to withdraw from the contract and to reclaim the goods due to the retention of title and withdrawal. If the Customer does not pay the purchase price due, we may assert these rights only if we have first set the Customer an appropriate time limit for payment without result or if setting a time limit may be dispensed with according to the provisions of law.
- (4) The Customer is entitled, valid until cancellation according to below (d), to sell and/or process the goods under reservation of title within accepted business practices. In this case the following provisions shall apply in addition. Resale within this meaning shall also include use of the goods in order to fulfill contracts for work so for example, their incorporation into a building for the purpose of manufacturing.
 - a. The reservation of title covers the products which are produced by processing, mixing or combination of our goods at their full value, whereby we are deemed the manufacturer. In case of processing, mixing or combining our goods with products of a third party, the title of which is retained, we shall acquire co-ownership in such processed goods in proportion to the invoice value. Incidentally the same shall apply to the produced product as to the goods delivered under retention of title.
 - b. The Customer hereby now already assigns the claims against third parties, which are established from the resale of the goods or product in total or in the amount of our possible co-ownership share, to us as collateral according to the afore-mentioned paragraph. We herewith accept such assignment. The obligations of the Customer stated in Par. 2 shall also apply in view of the assigned claims.
 - c. If reserved-title goods are installed by the Customer as an essential component in the real property of the Customer, the Customer hereby assigns the claims arising from the commercial sale of the real property or from real property rights to the value of the reserved-title goods with all additional rights and with priority over all other debts; we accept the assignment.

- d. The Customer shall still be authorized apart of us to collect such receivables after assignment. However, we undertake not to collect the claim as long as the Customer fulfils his payment obligations, is not in default of payment and, in particular, application has not been made to open insolvency proceedings and there is no other deficiency in the Customer's performance capacity and solvency as well we do not exercise our rights of retention of title under Par. 3 Should this, however, be the case we are entitled to demand that the Customer makes the assigned claim and the debtors known to us, provides all details necessary for collection, hands over the appropriate documents and informs the debtors (third parties) of the assignment. In this case, we are also entitled to revoke the rights of the Customer to sell and/or process the goods under reservation of title.
- e. If the realizable value of the collateral items exceeds our claims by more than ten per cent we shall upon request of the Customer release collateral items at our choice.

§ 10 Applicable law and Legal Venue; Language

- (1) The law of the Federal Republic of Germany, excluding international uniform law and in particular excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG), applies to these General Terms and Conditions of Sale and all legal relations between us and the Customer. The prerequisites for and the effects of retention of title according to § 9 shall be governed by the law in force at the place where the goods are stored if, under that law, the choice of German law would be inadmissible or invalid.
- (2) If the Customer is a merchant in terms of the German Commercial Code, a legal entity governed by public law or public law special assets the exclusive, including international, place of jurisdiction for all disputes arising directly or indirectly as a result of this contract is our place of business - Ertingen, 88521, Federal Republic of Germany. This shall also apply correspondingly where the Customer is an entrepreneur according to the Sec. 14 of the German Civil Code. However, we shall also be entitled to take action at the place of fulfillment for the delivery commitment according to these General Terms and Conditions of Sale respectively at the place of priorranking individual agreement or at the general legal venue of the Customer.
- (3) This text shall be governed by and construed in accordance with the laws of Germany. It shall be executed in both the German and the English language. In the event of any inconsistency between the German and the English version the German version shall prevail.

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