

# General Terms of Delivery and Payment of TOBSTEEL GmbH

(hereinafter referred to as „TOBSTEEL“).

D-74613 Öhringen, Version 09/2019

## I. Scope of Validity

1. The terms of sale given hereinafter apply to all contracts concluded between Purchaser and TOBSTEEL concerning the delivery of goods, provided that Purchaser is a company, legal entity under public law or special estate under public law. Contracts are executed exclusively on the basis of the following conditions. The quotation, the quotation acceptance, the order confirmation as well as the sale of any product are subject to these conditions. We shall not recognize any contradictory or deviating conditions of Purchaser, unless we have expressly agreed to apply these conditions. This consent requirement shall always apply, particularly if we carry out Purchaser's order without qualification and in full knowledge of these contradictory or deviating conditions of Purchaser.
2. In the contracts, all agreements that have been made between Purchaser and TOBSTEEL about the execution of the purchasing contracts up to the time of the respective termination of the contract are documented in writing. The effectiveness of individual agreements made retroactively in individual cases remains unaffected.
3. If TOBSTEEL and Purchaser have arranged a framework agreement, these General Terms of Sale shall apply both to this framework agreement and to the individual delivery or purchase order.
4. The General Terms of Sale shall also apply to all future business relationships, even if these terms are never agreed on expressly.

## II. Offer and Contract Conclusion

1. We can accept an order from Purchaser which is to be qualified as a legally binding offer for the conclusion of a purchasing contract within two weeks by sending an order confirmation or by rendering the ordered deliveries or services without qualification, with the choice being ours.
2. Our quotations are non-binding, unless we have expressly designated them as binding. Information about our goods (particularly technical data, dimensions, performance and consumption data as well as the descriptions in the respective product information or advertising materials, etc.) is only approximate and roughly representative, provided that usability for the contractually intended purpose does not require an exact match; this information does not guarantee the condition, unless this guarantee is made expressly and in writing.
3. We retain our property right, copyright and other protective rights on all figures, calculations, drawings and other documents. Purchaser may only share with third parties, make public, use, allow a third party to use or disseminate these materials to third parties, as such or in their content, with our written consent, regardless of whether we have designated these materials as confidential.
4. Information about current warehouse inventory is always non-binding. If inventory is communicated to the customer, this is considered inventory that is specifically reserved for customer or volume groups and does not need to be identical to the actual inventory.

## III. Terms of Payment

1. Our prices apply to the scope of service and delivery indicated in the order confirmations. Additional or special services are billed separately. Prices shall apply ex works in Öhringen, plus packaging, duties, insurance and, in individual cases, additional taxes and duties, if not otherwise specified. The statutory value added tax is not included in our prices. We list this in the invoice separately in the statutory amount on the date the invoice is issued.
2. Unless otherwise agreed, invoices shall be due and payable without deduction within 30 days from the date of invoicing and delivery. We grant a discount of 2% for payments made within 10 days of the date of invoice, unless Purchaser is in default of payment for other payment obligations towards us. Payment is only considered to have occurred once the funds are available to us. In the case of check payments, payment is only considered to have occurred once the check has cleared.
3. If Purchaser does not pay within the defined period, Purchaser shall be in default of payment, without a new payment request needing to be made. In the case of late payment, interest is to be paid on the purchase price at the legally applicable late payment interest rate for business owners. Further claims shall remain unaffected. If Purchaser does not render payment upon further request, we are entitled to make all existing obligations of Purchaser due and payable, in particular also deferred or installment payments, and to deny any further deliveries.
4. Purchaser shall be authorized to offset and/or withhold payment only if the counter-claims have been determined as legally valid, have been recognized by us, are indisputable or if the counter-claims arise from the same specific contractual relationship as the principal claim and are in a mutual relationship with this claim.
5. If TOBSTEEL has granted installment payments for Purchaser, the remaining amount shall be due and payable in full if Purchaser is in default of payment of an installment by more than 8 days.
6. Price changes are permitted if more than 4 months have passed between the contract conclusion and the agreed delivery date and if the price change can be traced back to a recent cost increase for which we are not liable. A cost increase has occurred if wages, material costs or sales costs increase before delivery. The same applies if duties increase or a duty is introduced, or cost changes result due to price increases of upstream suppliers or due to exchange rate fluctuations. In these cases, TOBSTEEL is authorized to increase the price appropriately in accordance with the cost increases.

## IV. Delivery and Service Period, Liability in Case of Late Delivery

1. Delivery dates or deadlines that are not agreed upon or promised by us expressly as binding are exclusively non-binding specifications. They shall only be considered approximations and describe a likely delivery date. Agreements or promises about a binding delivery date deviating from this must be made expressly and in writing. The delivery period only begins when Purchaser has properly and completely performed those cooperation activities that are obligatory on its part.
2. If we do not receive deliveries or services from our suppliers or subcontractors, or do not receive correct or timely deliveries or services for reasons for which we are not responsible despite proper coverage, or if an event of force majeure occurs, we will inform our customer in writing in a timely manner. In this case, we are authorized to extend the delivery or service period by the duration of the temporary hindrance or, in the case of a significant hindrance whose duration is not temporary, to withdraw from the part of the contract that has not yet been fulfilled, entirely or in part, if we have performed the above obligation of notification and have not assumed the procurement risk or production risk. Force majeure includes any other unforeseeable event upon contract conclusion, such as legal strikes or lockouts, government interventions, energy and resource shortages, transport bottlenecks or operational disturbances through no fault of our own,

such as those due to fire, water and machine damage, and all other hindrances for which we objectively cannot be held responsible. If the delivery or service is delayed by more than one month as a result of one of the cases named above in Clauses 1 and 3, both we and the customer - regardless of the deadline requirement for the customer and excluding any claims for damages - are authorized to withdraw from the contract with regard to the volume affected by the delivery disturbances. The customer is authorized to withdraw from the entire contract if a partial delivery is unacceptable for the customer.

3. In any case, we shall enter into default of delivery only after an appropriate grace period set by the customer has passed, unless time is of the essence for the transaction as defined by § 286 Par. 2 No. 4 of the German Civil Code (BGB) or § 376 of the German Commercial Code (HGB).

4. Our legal rights, particularly in the case of an exclusion of the duty to perform (e.g. due to impossibility or unreasonableness of performance and/or supplementary performance), remain unaffected. Claims for damages due to delayed delivery are excluded, provided that they are not based on any intentional or grossly negligent actions on our part or on the part of our subcontractors, or based on the culpable violation of essential contractual duties. Essential contractual duties are any that protect the essential legal positions of the customer, the guarantee of which is the very essence and purpose of the contract; these also include those contractual duties whose performance enables the proper completion of the contract in the first place and those whose observance the contract partner frequently trusts and may reasonably trust.

**The exclusion of liability does not apply to damages caused by injury to life, limb and health or damages affecting warranties.**

In the case of a simple negligent violation of an essential contractual duty, however, we shall only accept liability for typical, immediate, average damage foreseeable at the time that the contract was concluded.

5. We are only authorized to perform partial deliveries and partial services if

- the partial delivery or partial service is usable for the customer as part of the intended purpose of the contract,
- the delivery of the remaining ordered goods or the rendering of the remaining commissioned services is ensured, and
- this does not cause any significant added outlay or extra costs for the customer (unless we have agreed to accept these costs).

6. If Purchaser is in default of acceptance, we are then entitled to demand compensation for accrued damages and any extra expenses.

The same applies if Purchaser culpably violates its cooperation duties.

#### **V. Place of Fulfillment, Transfer of Risk, Shipping, Packaging**

1. In the absence of a deviating agreement, the place of fulfillment shall be our headquarters in Öhringen. This shall also apply in the case of supplementary performance.

2. The risk of accidental loss and accidental deterioration of the goods shall transfer to Purchaser upon handover at the latest. In the case of sales shipment, however, the risk of accidental destruction and accidental deterioration of the goods as well as the risk of delay passes to the shipper, freight carrier or other person or institution assigned to complete the shipment upon handover of the goods for shipment. Handover is still considered to have taken place if Purchaser is in default of acceptance.

3. With regard to the shipment method and shipping route, we will try to take into consideration the wishes and interests of Purchaser; added costs caused by this - even in the case of agreed free delivery - shall be borne by Purchaser.

4. With the exception of transport packaging, we do not take back packaging pursuant to § 15, Par. 1, page 1 of the Packaging Act.

Purchaser shall take care of disposal of the packaging, which becomes its property, at Purchaser's own expense. We would like to make our customers aware of the fact that they may be obligated to participate in a dual system as regards the packaging purchased from us as well as be subject to mandatory registration.

5. If the shipping is delayed on the request of or due to fault of Purchaser, we shall store the goods at Purchaser's risk and expense. In this case, the notice of readiness to ship shall be deemed equivalent to shipment.

6. On request and at the expense of Purchaser, we will insure the delivery using transport insurance. This requires an instruction from Purchaser given expressly and in writing.

7. We reserve the right to over-deliver or under-deliver by up to 10%.

#### **VI. Warranty/Limitation of Liability/Compensation for Wasted Expenditures**

1. There shall only be claims for defects from Purchaser if Purchaser has properly fulfilled its legally required examination and notification duties, particularly in accordance with § 377 HGB. Regardless of the legal requirements for proper examination, Purchaser shall at least examine the supplied goods after delivery at its location or that of a third party designated by Purchaser carefully and in a reasonable scope - if applicable, through random checks - for dimensional accuracy, material, weight and surface condition. Defects that are revealed in this way shall be indicated to us in writing within one week after receipt of goods. If this does not occur, the goods shall be considered accepted. Hidden defects shall be communicated to TOBSTEEL immediately after their discovery in writing. A proper notification of a defect shall indicate the willingness of Purchaser to send back the rejected delivered goods on the request of TOBSTEEL with freight prepaid. In the case of a justified notification of a defect, TOBSTEEL shall compensate Purchaser for the cost of the most economical shipping route; this shall not apply if costs increase because the delivered goods are located somewhere other than the place of intended use.

2. The legal regulations apply to the rights of Purchaser in the case of quality defects and defects of title (including incorrect and under delivery as well as improper assembly or defective assembly instructions), if not otherwise specified in preceding or following provisions.

3. Independent of preceding and following provisions, the legal regulations shall apply in the following cases:

- Intentional actions on our part
- Damage due to injury to life, limb and health
- Claims in accordance with product liability law
- If warranties taken over by us are excluded by deviating provisions

4. Otherwise, the following aspects apply to the rights of Purchaser in the case of quality defects and defects of title:

a) Liability for compensation for damages and compensation for wasted expenditures

Claims for damages due to defects of title and quality defects are excluded, provided that they are not

- Based on grossly negligent actions on our part or on the part of our subcontractors, or
- Based on the culpable violation of essential contractual duties Essential contractual duties are any that protect the essential legal positions of the customer, the guarantee of which is the very essence and purpose of the contract; these also include those contractual duties whose performance enables the proper completion of the contract in the first place and those whose observance the contract partner frequently trusts and may reasonably trust.

In the case of a simple negligent violation of an essential contractual duty, we shall only accept liability for immediate, average damage foreseeable at the time that the contract was concluded and typical of contracts of this type.

Claims for compensation for wasted expenditures in accordance with § 284 BGB shall be waived if and insofar as, as stated previously, a claim for compensation for damages in place of performance has been effectively disclaimed.

b) Supplementary performance

- If Purchaser has already installed the goods delivered by TOBSTEEL into another object or attached them to another object at its location, Purchaser must offer us the opportunity to remove the goods ourselves and reinstall or reattach improved or additional goods ourselves, provided that this is reasonable for Purchaser, for the purposes of supplementary performance, and to define an appropriate period for this. This shall apply regardless of whether we were originally obligated to install or assemble goods in addition to their delivery; using this approach, the installation or assembly of delivered goods does not become part of supplementary performance.

- If Purchaser has already resold the goods delivered by TOBSTEEL, Purchaser shall set a prior and appropriate period for TOBSTEEL for supplementary performance if Purchaser has to take back the goods from its customer as a result of the defect or if Purchaser's customer has reduced the purchase price.

- Our right to refuse supplementary performance in accordance with the legal requirements remains unaffected.

c) Compensation for expenses for supplementary performance

- Purchaser is only entitled to demand compensation from TOBSTEEL for expenses that become necessary for the removal and reinstallation or the removal and reattachment of the object by Purchaser at its location for the purposes of supplementary performance in accordance with other legal requirements if the appropriate period for this defined by Purchaser has expired unsuccessfully.

- If, in the case of resale by Purchaser, the object delivered by TOBSTEEL needed to be removed and reinstalled or removed and reattached at the location of a direct customer of Purchaser or a different customer in the supply chain for the purposes of supplementary performance, TOBSTEEL is not obligated to compensate Purchaser for the expenses that arise from this.

- If it is revealed that the request for rectification from Purchaser is unjustified, TOBSTEEL can demand compensation from Purchaser for the arising costs (particularly testing, installation, removal and transport costs), unless the lack of defect was not able to be determined by Purchaser.

The aspects listed above under lit. b) and c) shall not apply in the case of a delivery of newly produced goods by TOBSTEEL sold at the end of the supply chain in unprocessed form by a business owner to a consumer, even if the latter has processed it further (claims from § 478 BGB - Recourse of the entrepreneur). Particularly, further processing in the terms of this provision has occurred if the goods are installed into another product.

5. In case of delivery of newly produced goods by TOBSTEEL that are sold at the end of the supply chain in unprocessed form by a business owner to a consumer, even if the latter has further processed it, the following additional aspects apply to the rights of Purchaser:

- Claims of Purchaser based on § 478 BGB are excluded, provided that they involve a defect based on advertising statements or other contractual agreements not originating from TOBSTEEL, or if Purchaser, its immediate customer or another customer in the supply chain has provided a special guarantee to the end user.

- Claims are also excluded if Purchaser itself, its immediate customer or another customer in the supply chain was not obligated to exercise warranty rights toward the end user in accordance with legal regulations or if Purchaser has not objected to a claim asserted against it. This also applies if Purchaser, its immediate customer or another customer in the supply chain has taken over warranties vis-a-vis the end user that exceed the legal requirements.

- The claims of Purchaser based on § 478 BGB are excluded as a whole if Purchaser has not properly fulfilled its legally required examination and notification duties in accordance with the detailed specifications of Section VI No. 1.

## VII. Other Liability

Claims for damages due to a violation of a non-contractual duty (liability based on tort) or due to fault during or before the conclusion of the contract (culpa in contrahendo) as well as any other legal basis, particularly the violation of general duties arising from an obligation (§ 241 Par. 2 BGB) or other contractual duties (§ 280 Par. 1 BGB), provided that this does not involve warranty claims, are excluded, provided that they are not based on intentional or grossly negligent actions on our part or on the part of our subcontractors or based on culpable violation of essential contractual duties.

**The exclusion of liability does not apply to damages caused by injury to life, limb and health or damages affecting warranties and claims in accordance with product liability law.**

In the case of a simple negligent violation of an essential contractual duty, however, we shall only accept liability for typical, immediate, average damage foreseeable at the time that the contract was concluded.

## VIII. Limitation

1. Deviating from § 438 Par. 1 No. 3 BGB, the general limitation period for claims due to quality defects and defects of title, including the claim for reimbursement for expenses in the supply chain in accordance with § 445a Par. 1, Par. 3 BGB, is one year from delivery. If an acceptance has been agreed, the limitation begins upon acceptance.

2. However, if the goods constitute a building or an object that has been used as a building in accordance with the typical way it is used and has resulted in its defectiveness (building material), the limitation period is 5 years from delivery in accordance with the legal regulation (§ 438 Par. 1 No. 2 BGB). Other legal special provisions on limitation remain unaffected (particularly § 438 Par. 1 No. 1, Par. 3, §§ 444, 445b BGB).

3. Deviating from § 445b Par. 2 S. 2 BGB, in the case of resale of the goods delivered by TOBSTEEL by Purchaser, the suspension of expiration regarding the limitation of defect claims from Purchaser toward TOBSTEEL ends three years after delivery of the goods.

4. The present limitation periods from the sale of goods law shall also apply to contractual and non-contractual claims for damages from Purchaser based on a defect of the goods, unless the application of the regular legal limitation (§§ 195, 199 BGB) would lead to a shorter limitation in this individual case. However, claims for damages from Purchaser due to willful intent, gross negligence, injury to life, limb and health as well as warranties or product liability law expire by limitation only after the legal limitation periods. The shortening of the limitation period or the suspension of expiration shall also not apply if the matter involves the delivery of goods by TOBSTEEL that are sold at the end of the supply chain in an unprocessed state by a business owner to a consumer (Recourse of the entrepreneur - §§ 478, 479 BGB).

#### **IX. Retention of Title**

1. The goods delivered by us shall remain our property up to the fulfillment of all existing claims or claims arising in future owed to us on any legal basis from the ongoing business relationship and/or specific purchasing contract with Purchaser. In the case of Purchaser behavior that is contrary to the contract (e.g. payment default), we have the right to take back the reserved goods after first setting an appropriate period. If we take back the reserved goods, this represents a withdrawal from the contract. If we seize the reserved goods, this is a withdrawal from the contract. We are authorized to utilize the reserved goods after taking them back. After withdrawing an appropriate amount for the utilization costs, the proceeds of utilization shall offset the amounts owed to us by Purchaser.

2. Purchaser shall treat the reserved goods with care and insure them against damage due to fire, water and theft sufficiently at original value at its own expense. The maintenance and inspection work that is required shall be performed by Purchaser at its own expense in a timely manner. Furthermore, upon request by TOBSTEEL, Purchaser is obligated at any time to notify us about the state of the goods and communicate the storage place of the goods.

3. Purchaser is authorized to dispose of or use the reserved goods in the normal course of business, provided that Purchaser is not in default of payment. Pledges or assignments as security are not permitted. Purchaser shall assign claims arising from resale or another legal basis (insurance, tort) regarding the reserved goods (including all current account balance claims) to us in full scope as security; this statement constitutes our acceptance of the assignment. We revocably authorize Purchaser to collect claims assigned to us for Purchaser's account and in its own name. This collection authorization can be revoked at any time if Purchaser does not properly fulfill its payment obligations. Purchaser shall also not be authorized to assign this claim for the purposes of debt collection by way of factoring, unless the obligation of the factor is simultaneously established to effect the consideration in the amount of the debts directly to us for as long as we still have claims against Purchaser. Purchaser is furthermore obligated to notify us immediately of any seizure or other interference by a third party.

4. Any transformation of the reserved goods by Purchaser is always carried out on our behalf. If the reserved goods are processed with other items which do not belong to us, we shall acquire co-ownership of the new item in proportion to the value of the reserved goods (total invoice amount including value-added tax) to the other processed items at the time of the processing. In the case of inseparable combination of the reserved goods with other items that do not belong to us, we shall acquire co-ownership of the new item in proportion to the value of the reserved goods (total invoice amount including value-added tax) to the other combined items at the time of the combination. If Purchaser's item is to be considered the main item as a result of combination, we and Purchaser agree that Purchaser shall transfer co-ownership of this item to us on a proportional basis; this statement constitutes our acceptance of this transfer. Our sole or co-ownership of an item arising from this shall be kept for us by Purchaser. The same applies to the new item created through processing or transformation as to the reserved goods, but with the limitation that Purchaser shall only assign claims of third parties to us in the amount that we have acquired through co-ownership according to the previous statement.

5. In case of access of third parties to the reserved goods, particularly seizures, Purchaser shall indicate our property to the third parties and immediately notify us so that we may assert our property rights. If the third party is not able to reimburse us for the legal or out-of-court costs arising in this context, Purchaser shall be liable for this.

6. We are obligated to release the securities due to us insofar as the realizable value of our securities exceeds the secured claims by more than 10%, in which process we are at liberty to select the securities to be released.

#### **X. Place of Fulfillment, Jurisdiction, Applicable Law**

1. The place of fulfillment and jurisdiction for deliveries and payments (including protests of checks and bills of exchange), as well as for all disputes which arise between us and Purchaser due to the purchasing contracts concluded between us and Purchaser, is Öhringen. However, we are also entitled to file suit against Purchaser at its place of residence or business.

2. The legal relationship between us and our customers or between us and third parties shall be governed exclusively by applicable law in the Federal Republic of Germany, excluding international uniform law, particularly the UN Convention on Contracts for the International Sale of Goods.

#### **XI. Other**

1. If these provisions are or become partially void or incomplete or are excluded by a special agreement, the validity of the remaining provisions shall not be affected by this.

2. We would like to note that we store data of our customers as part of our mutual business relationships in accordance with applicable data protection regulations, particularly the European General Data Protection Regulation and the German Data Protection Act.

**TOBSTEEL GmbH**