

TERMS AND CONDITIONS

(„Terms and Conditions“)

D-74613 Öhringen, Version 04/2022

I. Applicability and Scope

1. Tobsteel GmbH's ("TOBSTEEL") Terms and Conditions including, but not limited to, TOBSTEEL's quotation, pro forma invoice, invoice, order confirmation, contract (collectively "Transaction") are the only terms governing the sale of products, meaning the sales of goods and services, between TOBSTEEL and its customers ("Customer(s)").
2. TOBSTEEL rejects any deviating or contradictory terms and conditions of Customer unless TOBSTEEL has expressly agreed to Customer's terms and conditions in writing. These Terms and Conditions prevail over any of Customer's general terms and conditions of purchase regardless whether or when Customer has submitted Customer's purchase order or such terms. Fulfillment of Customer's order does not constitute acceptance of any of Customer's terms and conditions and does not serve to modify or amend TOBSTEEL's Terms and Conditions.
3. TOBSTEEL Terms and Conditions are also applicable to (i) any individual Transaction e.g. individual orders and delivery within an existing framework agreement between TOBSTEEL and Customer (collectively "Parties", or individually "Party"), or (ii) for any future Transaction even if the Parties have not separately agreed to the incorporation of TOBSTEEL Terms and Conditions.
4. Individual clauses negotiated between the Parties and memorialized, for example, in a TOBSTEEL quotation, pro forma invoice, or order confirmation for a transaction take precedent over the corresponding clause in TOBSTEEL Terms and Conditions.

II. Offer and Contract Conclusion

1. If Customer places an order, the order is binding for Customer and can be, at TOBSTEEL's sole discretion, accepted by TOBSTEEL by order confirmation or actual delivery within two weeks.
2. TOBSTEEL's quotations are non-binding, unless TOBSTEEL has expressly declared a quote as being binding. Any information about TOBSTEEL's products including but not limited to technical data, dimensions, performance and consumption data as well as the descriptions in third party product information sheets or any marketing materials ("TOBSTEEL-Information") are only approximations. TOBSTEEL-Information is not a part of the Transaction and does not establish that Products are fit for Customer's intended and particular purpose, do not represent an independent guarantee unless TOBSTEEL expresses in writing unambiguously that the Products are fit for a particular purpose or TOBSTEEL issues an independent guarantee.
3. TOBSTEEL retains title to its intellectual property right, copyright and any other protective rights on all photos, schematics, calculations, drawings and other documents ("Intellectual Property"). Customer may only share TOBSTEEL's Intellectual Property with third parties, make public, use, allow a third party to use or disseminate these materials to third parties, with TOBSTEEL's prior written consent, regardless of whether TOBSTEEL designated its Intellectual Property as confidential.
4. Information about current warehouse inventory is always non-binding. If inventory is communicated to the Customer, then such inventory communication refers to inventory reserved for customer groups or volume groups which is not identical with TOBSTEEL's actual inventory.

III. Prices, Services, Delivery and Payment Terms

1. TOBSTEEL's net prices apply to quantities, services and terms of payment and delivery as set forth in TOBSTEEL's quotations or order confirmations. Additional or special services are billed separately. Prices are net prices calculated on the default delivery term Incoterm® 2020 *Ex Works* warehouse in Öhringen, Germany. Prices are calculated without packaging, duties, insurance and, in individual cases, additional taxes and duties, if not otherwise specified. If applicable, German value added tax in place when the invoice is issued and listed separately in the invoice.
2. Unless otherwise agreed, invoices shall be due and payable without deduction within 30 days from the invoice date and delivery. TOBSTEEL grants a 2% discount for payments received no later than 10 days after the date on the invoice, unless Customer is in default of payment for other payment obligations. Payment is made when TOBSTEEL received the funds at its free disposal. Payment by check is made when the check clears.
3. If Customer does not pay an invoice within 30 days, Customer is automatically in default; no further written notice demanding payment must be issued ("Event of Default"). From and after the earlier to occur of an Event of Default, the entire balance of an invoice remaining unpaid will automatically bear interest at the maximum rate permitted by law for companies. Other claims remain unaffected and are cumulative. If Customer does not render payment upon a second demand notice, TOBSTEEL is entitled to (i) demand immediate payment of all payments owed by Customer including but not limited to deferred payments or installments and to deny any further deliveries, or (ii) demand pre-payment in full for any order prior to shipment.
4. Customer is entitled to offset and/or withhold payment only if Customer has an enforceable counterclaim rendered by court of law, TOBSTEEL acknowledged such counterclaim, or the counterclaim stems from the same contractual relationship as TOBSTEEL's payment claim.
5. If TOBSTEEL has granted to Customer to pay in installment, the remaining amount will automatically become due and payable in full if Customer is in default by more than 8 days.
6. TOBSTEEL reserves the right to increase prices (i) if more than 4 months have passed between the conclusion of a contract and the agreed delivery date and (ii) if the price change can be traced back to a recent cost increase for which TOBSTEEL is not responsible for. Grounds for a price increase include, but are not limited to, higher wages, higher costs for materials or distribution, a new duty is introduced, sub-contractors and suppliers increase prices, or changes in the currency exchange rate.

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

1. TOBSTEEL's delivery dates or delivery periods are non-binding and represent an approximate date or time frame unless TOBSTEEL explicitly agreed in writing otherwise. A delivery period commences only when Customer has provided all information, data, technical schematics, or rendered any other necessary participation.
2. If TOBSTEEL does not receive deliveries or services from TOBSTEEL's sub-suppliers or sub-contractors or TOBSTEEL does not receive correct or timely deliveries or services for reasons for which TOBSTEEL is not responsible for, or if an event of *force majeure* (as defined below) occurs, TOBSTEEL will notify Customer in writing about it without undue delay. In this case, TOBSTEEL is entitled to extend the duration equal to the time the temporary hindrance lasted or, in the case of a significant permanent hindrance, to withdraw (i) from the part of the contract that has not yet been fulfilled yet, (ii) from the contract entirely or in part. Withdrawal is contingent upon TOBSTEEL having provided written notice to Customer and TOBSTEEL not having assumed the procurement 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, pandemic or epidemic restrictions (for example COVID-19), or operational disturbances which TOBSTEEL has not caused by willful or gross negligent misconduct or omission including but not limited to damages by fire, water and machinery, and all other hindrances for which TOBSTEEL objectively cannot be held responsible. If the delivery or service is delayed by more than one month as a result of one of the aforementioned cases in sentence 1 and sentence 3, either Party, is entitled to withdraw from the remainder of the contract without either Party being liable for any damages from the withdrawal. The Customer is entitled to withdraw from the entire contract if a partial delivery is unreasonable for the Customer.
3. In any case, TOBSTEEL is in default for a late delivery only after the Customer has provided TOBSTEEL the opportunity to cure the later delivery, unless time is of the essence for the transaction as set forth in § 286 Par. 2 No. 4 of the German Civil Code or § 376 of the German Commercial Code.
4. If TOBSTEEL's is excused from an obligation to perform under the contract (e.g. due to impossibility or unreasonableness of performance and/or repair or redelivery), TOBSTEEL's other statutory legal rights remain unaffected. Customer's damage claim due to delayed delivery or violation of an essential contractual obligation are excluded unless TOBSTEEL, or a vicarious agent of TOBSTEEL, acted intentionally or gross negligently. Vicarious agents meaning an agent agents, employees, or subcontractors engaged or appointed by and under control of TOBSTEEL ("Vicarious Agents(s)"). Essential contractual obligations are those which protect the Customer's legal positions which are essential to the contract, its content and purpose ("Essential Obligation"). The exclusion of liability does not apply to damages caused by death or bodily injury, or a case already covered by a warranty claim. In case of a slight negligent (*leichte Fahrlässigkeit*) but not intentional or gross negligent violation, TOBSTEEL's liability is limited to the contract's characteristic damage (*vertragstypischen Schaden*), direct and average damage (*unmittelbaren Durchschnittsschaden*), and foreseeable damage (*vorhersehbaren Schaden*) at the time that the contract was concluded.
5. TOBSTEEL is only entitled to partial deliveries and partial services ("Partial Execution") if (i) the Partial Execution is useable for Customer's intended purpose of the contract, (ii) the delivery of the remainder of the ordered products or services is certain, and (iii) the Partial Execution does not cause any significant increase in expenses or costs unless TOBSTEEL has agreed to otherwise.
6. If Customer does unlawfully deny the acceptance of the products, Customer is automatically in default and TOBSTEEL is entitled to demand compensation for accrued damages and any extra expenses. The same applies if Customer's negligent or intentional conduct constitutes a breach of Customer's duty to cooperate.

V. Place of Performance, Transfer of Risk, Shipping, Packaging

1. Unless the Parties agreed in writing otherwise, the execution and place of performance of any obligation or duty under the concluded contract is TOBSTEEL's place of business in the city of Öhringen, Germany. The same applies to any redelivery of non-defective product if a Customer has a justified warranty claim (see Section VI below).
2. Customer carries the risk of accidental loss and accidental deterioration of the products. In case of sales or shipment, however, the risk of accidental loss and accidental deterioration of the products as well as the risk of delay passes to the shipper, freight carrier or other person or institution assigned to complete the shipment ("Carrier") no later than when the products are handed over to the Carrier. The same applies when the Customer is in default of acceptance.
3. TOBSTEEL will take Customer's preference into consideration regarding Carrier's transport method and route. If so, any additional expenses and costs will be borne by Customer even when the initial purchase entailed a free delivery.
4. Unless the packaging for transport falls within § 15, para. 1 of the German Packaging Act, TOBSTEEL will not take back any packaging and Customer is solely responsible and carries all expenses for the disposal of such other packaging which becomes Customer's sole property. TOBSTEEL points out to Customer that Customer may be obligated to participate in a dual system recycling system and may be subject to mandatory registration.
5. If the shipping is delayed on the request of or due Customer's conduct, TOBSTEEL will store the products at Customer's risk and expense. TOBSTEEL's prior notice to ship the products is deemed equivalent to shipment.
6. On request and at the expense of Customer, TOBSTEEL will insure the products with a transport insurance provided Customer has made such request expressly and in writing.
7. TOBSTEEL reserves the right to over-deliver or under-deliver product by up to 10%.

VI. Warranty / Limitation of Liability / Futile Expenses

1. TOBSTEEL warrants to Customer for a period of 12 months from the date of shipment and delivery of the products to Customer ("Warranty Period") that such products will be free from defects including but not limited to quality, quantity, incorrect and under delivery as well as improper assembly or defective assembly instructions, unless these Terms and Conditions provide otherwise.
2. A warranty claim for defective products requires Customer to properly inspect the delivered products and to provide TOBSTEEL with a written notification within one [1] week after delivery about any defects pursuant to § 377 of the German Commercial Code. The scope of inspection, if applicable, through random checks, includes but is not limited to dimensional accuracy, material, weight and surface condition. If Customer does not inspect and notify TOBSTEEL, the products are deemed to have been accepted by Customer. Hidden defects shall be communicated to TOBSTEEL immediately after their discovery in writing. If Customer made a proper notification for the defective products, Customer will return the rejected products upon request by TOBSTEEL (freight prepaid). In the case of a justified warranty claim, TOBSTEEL shall compensate Customer for the cost of the most economical shipping route; this shall not apply if costs increase because the delivered products are located somewhere other than the place of intended use.
3. Any limitation of liability set forth in this Section VI does not apply to (i) liability resulting from TOBSTEEL intentional conduct, (ii) death or bodily injury resulting from TOBSTEEL's acts or omissions, (iii) German Product Liability Act (tort) (*Produkthaftungsgesetz*), or (iv) a guarantee provided by TOBSTEEL in writing stipulating otherwise.
4. If warranty claim for defective products or a defect in title exists (collectively "Defect(s)"), the Parties agree upon the following limitations of liability:
 - a) Damages: Liability for any damage and compensation for futile expenses are excluded unless (i) TOBSTEEL, or TOBSTEEL's Vicarious Agent, acted gross negligent or (ii) TOBSTEEL breached an Essential Obligation (as defined above) and TOBSTEEL acted intentionally or gross negligently. In case of a simple negligent (*einfache Fahrlässigkeit*) but not intentional or gross negligent conduct, TOBSTEEL's liability is limited to the contract's characteristic damage (*vertragstypischen Schaden*), direct and average damage (*unmittelbaren Durchschnittsschaden*), and foreseeable damage (*vorhersehbaren Schaden*) at the time that the contract was concluded. Claims for reimbursement of futile expenses pursuant to § 284 of the German Civil Code are not recoverable if the limitation of liability pursuant to Section 4 a), (i) and (ii) above applies.
 - b) Repair or Redelivery (*Nacherfüllung*): If Customer has already installed the defective products, Customer must offer TOBSTEEL the opportunity, at TOBSTEEL sole discretion reasonably exercised, to repair the defective products or effect redelivery with non-defective products within a reasonable timeframe unless such repair or redelivery is unreasonable for the Customer. This applies regardless of which Party had the initial obligation to install or assemble the products prior to the redelivery. If Customer has already resold the defective products to its customer and such customer has returned the defective products or reduced the purchase price, Customer must set an appropriate timeframe for TOBSTEEL to effect redelivery. TOBSTEEL's legal right to deny redelivery vis-à-vis Customer under statutory law remains unaffected.
 - c) Expenses for removal and reinstallation (*Ein- und Ausbaukosten*): Customer is only entitled to demand compensation from TOBSTEEL for expenses that are necessary for the removal of defective products and reinstallation of non-defective products ("Removal and Reinstallation") if Customer has provided TOBSTEEL with a reasonable timeframe within which TOBSTEEL can effect redelivery and TOBSTEEL's redelivery is late. If Customer resold the products to its customer and any transaction thereafter, TOBSTEEL is under no obligation to provide compensation for the Removal and Reinstallation to Customer or any subsequent party in the supply chain. If Customer's request for Removal and Reinstallation is unjustified, TOBSTEEL can demand compensation from Customer for testing, installation, removal and transport costs provided that the non-defectiveness was hidden and could not be recognized by Customer (§ 478 if the German Civil Code).
5. If deliveries occur within a supply chain and the last purchaser is a private consumer, Customer's rights under § 478 German Civil Code are modified as follows:

Customer claim pursuant to § 478 German Civil Code is excluded if (i) the defectiveness of the products is based on an marketing statement or another contract including a guarantee where TOBSTEEL is not party to, (ii) a purchaser in the supply chain did not exercise its own statutory defenses against warranty claims brought against it, (iii) Customer granted warranty rights beyond the scope of statutory warranty rights to its immediate customer or another customer in the supply chain, or (iv) if Customer has breached its inspection and notification duties under statutory German law as set forth in Section VI, a) above.

VII. Miscellaneous Limitation of Liability for Tort and Culpa in Contrahendo

Unless covered by a warranty claim (see Section IV above), liability is excluded for damage claims based on a breach of a non-contractual obligation (liability in tort), *culpa in contrahendo*, or the breach of general duties of consideration (*allgemeiner Rücksichtnahmepflicht*) of § 241 para. 2 of the German Civil Code or other contractual obligations (*sonstiger Vertragspflichten*) of § 280 para. 1 of the German Civil Code. The exclusion is not applicable if (i) TOBSTEEL, or its Vicarious Agent, acted intentionally or grossly negligently or (ii) TOBSTEEL breached an Essential Obligation with intent or negligence. In the event of a simple negligent (*einfache Fahrlässigkeit*) breach of an Essential Obligation, TOBSTEEL is only liable for the direct average damage (*unmittelbaren Durchschnittsschaden*) that is foreseeable and typical for this type of contract. The limitation of liability is also not applicable in the case of death or bodily injury, individual guarantees granted or claims under the German Product Liability Act.

VIII. Period of Limitation

1. Deviating from § 438 Par. 1 No. 3 of the German Civil Code, the period of limitation for Defects, including the claim for reimbursement for expenses within a supply chain in accordance with § 445a Par. 1, Par. 3 of the German Civil Code, is one [1] year from delivery. If an acceptance has been agreed to by the Parties, the period of limitation begins upon acceptance.
2. If the products caused a Defect the period of limitation is 5 years from delivery pursuant to § 438 Par. 1 No. 2 of the German Civil Code provided that the products qualify as a structure or have been used within a structure. Any other period of limitation including but not limited to § 438 Par. 1 No. 1, Par. 3, §§ 444, 445b of the German Civil Code remain unaffected.
3. Deviating from § 445b Par. 2 S. 2 of the German Civil Code, if the products TOBSTEEL delivered, are resold by Customer, any extension of the period of limitation due to an interruption of the period of limitation ends (*Hemmung*) after three [3] years after TOBSTEEL delivered the products.
4. The period of limitations apply to all contractual and non-contractual claims for damages based on a Defect, unless the period of limitation under statutory law (§§ 195, 199 of the German Civil Code) result in a shorter period of limitation. This limitation for the period of limitation does not apply to claims based on (i) TOBSTEEL intentional conduct, (ii) death or bodily injury resulting from TOBSTEEL's acts or omissions, (iii) the German Product Liability Act (tort) (*Produkthaftungsgesetz*) and (iv) a sale to a private end consumer being the last purchaser of a supply chain (§§ 478, 479 of the German Civil Code).

IX. Retention of Title until Full Payment

1. Title of the products passes from TOBSTEEL to Customer only after TOBSTEEL has received full payment for the products (*Eigentumsvorbehalt*). As collateral security for the payment of the purchase price of the products, Customer hereby grants to TOBSTEEL a lien on and security interest in and to all of the right, title, and interest of Customer in, to and under the products, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. If Customer is in default of payment, TOBSTEEL reserves the right to reclaim the products provided TOBSTEEL issued a notice of default including a reasonable timeframe until which payment is being requested.
2. Customer must handle products not paid in full with care and insure them against damage due to fire, water and theft sufficiently at the initial value of the new products at Customer's own expense. Upon TOBSTEEL's written request, Customer must inform TOBSTEEL about the state and storage location of the products. Any maintenance and inspection work, if applicable, that is required must be made by Customer at Customer's own expense in a timely manner.
3. Customer is authorized to dispose of or use the products in the ordinary course of business, provided that Customer is not in default of payment. Pledges or assignments as security are not permitted. Customer must assign claims arising from resale or another legal basis (insurance, tort) regarding the reserved goods (including all current account balance claims) to TOBSTEEL in full as security; this statement constitutes our acceptance of the assignment. TOBSTEEL revocably authorize Customer to collect claims assigned to TOBSTEEL for Customer's account and in its own name. This authorization to collect can be revoked at any time if Customer does not comply and fulfill Customer's payment obligations. Customer is not authorized to assign this claim for the purposes of debt collection by way of factoring, unless the factor simultaneously establishes and undertakes the obligation to make payments directly to TOBSTEEL until full satisfaction of TOBSTEEL's payment claim against Customer. Customer will notify TOBSTEEL in writing without undue delay about any enforcement action or other action by a third party against TOBSTEEL's products.
4. If TOBSTEEL's products are subject to further processing within which the products are mixed with or become inseparable from other goods, TOBSTEEL automatically requires co-ownership on the resulting goods. The co-ownership is pro-rated according to the initial value the individual products resulting in a new good.
5. If third parties seize the unpaid products to which TOBSTEEL still has title to, Customer will unambiguously notify the third party about TOBSTEEL's title on the products and Customer will notify TOBSTEEL without undue delay about the third party's enforcement action. If the third party does not reimburse TOBSTEEL for the legal or out-of-court costs arising in this context, Customer shall be liable for such costs.
6. TOBSTEEL is obligated to release any security interest in the products insofar as the commercial actual value of TOBSTEEL's security interest exceeds the secured payment claims by more than 10%; TOBSTEEL reserves the right to select the security interest to be released.

X. Jurisdiction, Governing Law

1. Any legal suit, action, or proceeding ("Legal Action") arising out of or relating to these Terms and Conditions shall be instituted in a German court located in the city of Öhringen, Germany, for claims of up to Euro 5,000.00 or the City of Heilbronn, Germany, for claims exceeding Euro 5,001.00, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. TOBSTEEL reserves the right institute any Legal Action at Customers place of business.
2. For purpose of Art. 7 EuGVVO, the place of performance (*Erfüllungsort*) is TOBSTEEL's principal place of business in the city of Öhringen, Germany or the city of Heilbronn, Germany, dependent on the value of the claim (see above).
3. All matters arising out of or relating to these Terms and Conditions are exclusively governed by and construed in accordance with the laws of Germany without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than Germany. The international uniform law, particularly the UN Convention on Contracts for the International Sale of Goods is excluded.

XI. Miscellaneous

1. Provisions of these Terms and Conditions which by their nature should apply beyond their terms will remain in force after any withdrawal from or termination, expiration, cancellation of this Agreement including, but not limited to, the following provisions in Section X Jurisdiction and Governing Law and this Section XI, Nr. 1.
2. If any term or provision of these Terms and Conditions is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of these Terms and Conditions or invalidate or render unenforceable such term or provision in any other jurisdiction.
3. TOBSTEEL hereby notifies its Customer that it stores data of our Customers as part of our mutual business relationship in accordance with applicable data protection regulations, particularly the European General Data Protection Regulation and the German Data Protection Act.

TOBSTEEL GmbH