

# General Terms and Conditions of Delivery and Payment

## 1. General

1.1 The following terms and conditions apply exclusively to all of our deliveries and are valid only in business transactions with companies, legal entities under public law or special funds under public law. Our terms and conditions also apply to all future business relationships even if they are not expressly stipulated again. In submitting an order based on our offer, but at the latest 14 days upon receipt of the order confirmation without objection, the Customer agrees to our terms and conditions. Should our conditions meet contradictory conditions of the Customer, even if they are contained in the order confirmation at a later date, our conditions apply exclusively even if we do not object. We only recognize conflicting conditions or conditions of the Customer that deviate from our General Terms and Conditions of Delivery and Payment if we expressly agree to them in writing.

1.2 Our offers are subject to change. A contract can only be concluded with our written consent and order confirmation. We will accept an order within 2 weeks. This also applies to any side-letters. Side-letters must be made and confirmed in writing.

1.3 The Customer agrees with the above procedure; if not, objections must be expressed immediately in writing within 7 days.

1.4 In case of objection, we reserve the right to reject the Customer's order without becoming subject to any claims against us.

1.5 We reserve the title and copyright to all of the documents, such as calculations, illustrations etc., we provide to the Customer. The Customer may not disclose the documents to third parties without our explicit written consent. If we do not accept the Customer's offer within the time defined in clause 1.2, the documents are to be returned to us without delay.

1.6 If written form is required, we shall also accept fax messages.

## 2. Prices and Terms of Payment

2.1 Unless special terms are agreed, our prices apply ex works and/or ex warehouse and exclude packaging; the applicable value added tax (VAT) must be added. The costs for packaging, delivery, expenses, customs, taxes etc. are invoiced separately.

2.2 Terms of payment are Net 30 days after the invoice date.

2.3 The terms of payment specified above do not apply to repair or lease invoices; these invoices are payable within 10 days after the invoice date without deduction.

2.4 If payment is not submitted within the agreed payment periods, we shall charge interest on late payment amounting to 8 percentage points above the base interest rate. We reserve the right to claim any higher damage.

2.5 We reserve the right to change our prices appropriately if costs decrease or increase after conclusion of the contract due to wage settlements, price changes for required materials or changed delivery costs.

2.6 We are not obliged to accept checks or bills of exchange. If we do accept them, they will be considered a valid payment only after having been redeemed; in this case, any bank charges are the responsibility of the Customer.

### **3. Terms of Delivery and Shipment**

3.1 We shall not be bound by delivery times unless explicitly agreed upon.

3.2 We shall comply with the stated delivery times provided that all technical issues have been solved and the Customer fulfills his obligations properly and timely. We reserve the right to object to unfulfilled contracts.

3.3 If a delivery time has been explicitly specified, we shall not be bound to the obligation to deliver in cases of force majeure, official measures, breakdowns in our own plants or in our suppliers' plants and in circumstances where the supplier does not deliver for any reason. The Customer has the right to withdraw from their purchase if an appropriate grace period of a minimum of two weeks for remediation has been granted in writing.

3.4 If the acceptance of delivery is delayed by the Customer or if the Customer violates his obligation to cooperate, we are entitled to claim compensation for the arising damages, including any additional expenses. We reserve the right to file further claims. The risk of accidental loss or accidental deterioration of the goods shall pass from us to the Customer at the time when the acceptance of the delivery is delayed or when the Customer violates any of his obligations to cooperate.

3.5 Further legal claims and rights of the customer remain unaffected.

3.6 Shipping shall be at the Customer's own risk. Transportation insurance or any other insurance is arranged for only upon the Customer's explicit request and at his own expenses. The risk of accidental loss or accidental deterioration of the goods shall pass from us to the Customer at the time when the goods leave the works or the warehouse; irrespective of whether the goods are dispatched from the place of delivery and irrespective of who bears the shipping costs.

### **4. Retention of Title**

4.1 We shall retain title to the goods delivered until all claims arising from the business relationship with the Customer have been fulfilled completely. This also applies if the purchase price for certain goods as specified by the Customer is already paid. With running accounts, the retention of title serves as security for our claims. This shall also apply to all future deliveries without any explicit reference thereto. If the Customer acts contrary to the contract, especially in case of default of payment, we reserve the right to reclaim the delivered goods after an appropriate grace period and the Customer is obliged to return the goods. Our reclaiming the delivered goods always constitutes a withdrawal from the contract. After reclaiming the delivered goods we have the right to utilize the goods at our own discretion;

the proceeds of the utilization are credited towards the Customer's dues, after deducting appropriate costs.

4.2 Processing or reshaping are always performed on our behalf, however without any obligation for us. If any goods subject to retention of title are processed and/or reshaped and their value rises due to their processing, the Customer is not entitled to claim for compensation from us.

4.3 If any goods subject to retention of title are mixed or combined with other materials or goods and our title to the goods expires as a result thereof, it shall be agreed as of now that title to the uniform goods passes to us in proportion to the value (invoice value). The Customer shall safeguard the goods owned or co-owned by us free of charge.

If the goods are mixed or combined with other products in such a way that the mixed product becomes the main product, it shall be agreed that the Customer transfers proportionate co-ownership to us and shall safeguard the ownership or co-ownership for us. To secure our claims against the Customer, the Customer shall also assign to us the claims arising from the combination of the goods with real estate against a third party; we hereby accept this assignment.

4.4 The Customer is entitled to process and sell the goods subject to retention of title in due course of business, as long as the Customer is not in default of payment. The Customer may not pledge the retained goods or use them as security. Claims of the Customer against third parties in regards to the retained goods, for any legal reason, are assigned to us immediately in the amount of the agreed total invoice sum (including VAT). If the goods have been processed, the claims amount to proportionate invoice value.

We grant the Customer the revocable authorization to collect the claims assigned to us on his own behalf. Our rights to collect the claims ourselves are not affected. We shall make no use of our right to collect as long as the Customer meets his payment obligations from the amounts received, does not enter payment default and in particular no application is filed for the opening of insolvency proceedings or payments are suspended. Upon request, the Customer shall disclose the assignment and retention of title and provide the required information and documents.

4.5 The Customer is obliged to inform any interested third party of our ownership claims, as long as they exist, and to immediately furnish us with a written notification of seizure in case a seizure process has been invoked by the third party, in order to enable us to file a law suit according to clause 771 of the German Code of Civil Procedure (§ 771 ZPO). In the event that any such third party is unable to reimburse the cost of proceedings both in and out of court in accordance with § 771 ZPO, the Customer shall be made liable for the loss.

4.6 We commit to releasing the securities we are entitled to upon the Customer's request at our discretion insofar as the value of our securities exceeds the claims to be secured by more than 10%. Notwithstanding, the transfer of ownership to the Customer is effected only after final payment of the full value and the possible extra costs, such as freight and insurance, and/or in case of a bill credit, after cashing the bill. We shall not assume any liability if a bill is not accepted or not cashed and protest arises in a timely manner.

4.7 We are entitled at any time to inform third parties of the assignment.

4.8 Irrespective of the above assignment of claims (extended retention of title), the Customer pledges his assignment to us against third parties regarding the retained goods, independent of the legal ground. We shall accept the pledge. The Customer entitles and authorizes us with notifying third parties of the pledge.

## **5. Notification of Defects and Warranty**

5.1 The Customer shall only be entitled to assert claims arising from defects if the Purchaser has properly fulfilled the obligation to inspect the goods upon receipt and submit complaints if applicable as required by clause 377 of the German Commercial Code (§ 377 HGB). The Customer shall be required to diligently inspect the goods immediately after receipt. The Customer shall check whether the delivered goods are free of defects and usable for the intended purpose. Defects must be reported to us in writing no later than 14 days after delivery of the goods or else our liability shall be cancelled. The date of receipt of the notification in our office is binding.

5.2 Warranty claims expire after 12 months after delivery of the goods and receipt by our Customer. The above provisions shall not apply, insofar as the law defines longer periods in accordance with the German Civil Code (BGB) regarding buildings and goods for buildings, regarding the right of recourse, and regarding construction defects). The period of limitation in the case of delivery recourse as defined in clauses 478, 479 of the German Civil Code (§§ 478, 479 BGB) shall remain unaffected. Our consent must be obtained prior to any return of goods.

If the delivered goods have legitimate defects, despite all due care, at the time of the transfer of risks, we shall initially fulfill our warranty obligations by our choice of either eliminating the defect or supplying an item which is free of defects, if we are notified of the defects in a timely manner.

In all cases, we must be granted the opportunity of subsequent fulfillment in accordance with the statutory regulations within an appropriate deadline.

5.3 If our subsequent performance fails, the Customer shall be entitled to demand, at the latter's choice, a reduction of the payment or withdraw from the contract. His right to indemnification shall not be impacted. The Customer shall not be entitled to compensation for wasted expenditure.

5.4 Claims for defects cannot be asserted in the case of only insignificant deviation from the agreed properties and condition, in the case of only insignificant impairment of usability, in the case of natural wear and tear, or in the case of damage arising after the transfer of risk as a result of incorrect or careless handling, excessive strain, unsuitable equipment, poor construction work, an unsuitable foundation, or due to special external influences that could not have been foreseen at the time the contract was agreed upon. Likewise, if repair work or modifications are carried out improperly by the purchaser or a third party, claims for defects cannot be asserted for these or the resulting consequences.

5.5 Claims on the part of the purchaser for expenditures necessary for the purpose of subsequent performance, particularly transport, travel, labor, and material costs, are excluded if these expenditures increase because the goods delivered by us were subsequently transported to a location other than the purchaser's place of business, unless such transport is consistent with the goods' intended use.

5.6 The Customer can only assert rights of recourse against us insofar as no agreements have been made between the Customer and the Customer's buyer that go beyond the mandatory statutory rights relating to defects. Furthermore, as for the scope of the Customer's right of recourse against us, Section 5.5 applies accordingly.

5.7 Any further claims other than those provided for in Section 5 against us and our subcontractors are excluded.

5.8 In case of willful concealment of a defect or in case of provision of a warranty for the condition of the goods at the time of the transfer of the risk (i.e. the Customer's declaration that the object of purchase has a certain property during the transfer of risk and that the seller will be held liable for all consequences of the missing property, regardless of fault), the Customer is entitled to the full use of the standard legal regulations.

## **6. Limitation of Liability**

6.1 Regardless of the legal basis, we shall only be held liable in the following cases: a) willful intent, b) gross negligence, c) consequential harm to life, body and health, d) fraudulent concealment of defects or guarantee for non-existence of these defects, e) by the binding product liability legislation.

6.2 In the case of breach of duty due to slight negligence, our liability shall be limited to average damage which is contract-typical, direct, and predictable for these types of goods or services.

6.3 Further claims are excluded.

## **7. Right of Retention and Right to Offset**

The Customer has the right to offset own claims against us only insofar as the Customer's claims are undisputed or validated. The Customer shall only be entitled to a right of retention if his counterclaim refers to the same contractual relationship.

## **8. Final Clauses**

8.1 The Contract is governed by the laws of the Federal Republic of Germany. The United Nations' Convention on Contracts for the International Sale of Goods (CISG) shall expressly not apply.

8.2 The invalidity of any provision of these terms and conditions does not affect any part of the remaining provisions. The invalid provision will be replaced by one best achieving the economic purpose originally aimed at.

8.3 The place of performance is Gräfelfing, Germany.

8.4 The parties submit all their disputes arising out of or in connection with these terms to the exclusive jurisdiction of the Courts of Munich, Germany.

Note: This is a translation of the German 'Allgemeine Liefer- und Zahlungsbedingungen der geoKOAX GmbH'. In case of differences of interpretation, especially regarding the legal

content, the original German version applies. geoKOAX GmbH will not be responsible for claims based on the translation.