

General terms and conditions of sale and delivery of TESIUM GmbH

1. Scope

- a) The general terms and conditions of sale and delivery below apply exclusively to all purchase agreements that we conclude with any contractual partner of ours (hereafter referred to as a "Customer"). Any adverse terms and conditions of the Customer or ones which differ from these terms and conditions shall not be recognised by us unless we have expressly agreed in writing that these shall apply. Our terms and conditions of sale and delivery also apply where we carry out the delivery to the Customer without reservation in the knowledge of adverse terms and conditions of the Customer or ones which differ from these terms and conditions.
- b) Our terms and conditions of sale and delivery only apply against entrepreneurs within the meaning of section 310, subsection 1 of the German Civil Code (BGB) and they also relate to all future transactions with the Customer.

2. Quote and contract conclusion

- a) Our quotes are without obligation in relation to price, quantity, delivery deadline and the possibility of delivery.
- b) Customer orders becoming binding for us through written or printed order confirmation (including an invoice or delivery slip).
- c) TESIUM reserves the unrestricted property rights and copyrights to quotes, cost estimates, plans and other documentation. This documentation may only be made available to third parties where prior written consent for this is received from TESIUM.

3. Prices, payment terms

- a) Prices can be agreed as a binding fixed price, a guide price or in accordance with time and labour or measurement;
- b) they are in principle applicable plus the statutory VAT.
- c) We invoice the agreed prices or, where no agreement has been made, the prices applicable at the point of delivery, plus any packaging and shipment costs plus statutory VAT in each case.
- d) We reserve the right to change our prices accordingly where there are cost reductions or cost increases following conclusion of the contract, in particular where these are based on trade agreements or material price changes. In this event the Customer is entitled to withdraw from the contract within a period of 2 weeks following notification of the price increase.
- e) The purchase price is due for payment in full immediately and without any deduction unless stated otherwise in the order confirmation or invoice. Discounts require a special written agreement. The statutory regulations shall apply to those cases where the Customer is in default of payment.
- f) We reserve the right to make deliveries against cash on delivery or with payment in advance. Where there are legitimate doubts concerning the Customer's ability to pay or creditworthiness and if the Customer is not prepared to make an advance payment or provide appropriate securities for the payment under its responsibility despite a corresponding request, then we shall be entitled to withdraw from the contract to the extent that we have not yet provided performance.
- g) We reserve the right to use payments in settlement of the oldest invoice items due plus the default interest and costs incurred with these in the following order: costs, interest, principal claim.
- h) The Client is only entitled to offset payments where the counter-claim is undisputed or has been determined by law. The Customer shall only be entitled to assert a right retention where its counter-claim is based upon the same contractual relationship.

4. Delivery deadlines

- a) We endeavour to deliver as quickly as possible at all times. Fixed delivery deadlines only come into existence where these have been expressly agreed in writing. If this is the case then the Customer must grant us a reasonable extension period of four weeks in general in the event that we are delayed with the delivery.
- b) Deliveries are subject to the proviso that we receive correct and timely delivery from our own suppliers.
- c) The date for delivery shall be the date that the goods leave our plant or our warehouse and, if this date cannot be ascertained, the date that the goods are provided to the Customer.
- d) We are also entitled to deliver partial quantities without providing any special notification of this.

5. Shipment

- a) We reserve the right to select the shipment channel and shipment type. Additional costs caused through special shipment requests of the Customer shall be borne by the Customer.
- b) The Customer shall bear the risk of transportation in all cases. Risk shall pass at the point that the goods are handed over to the Customer or its agent (e.g. the carrier) at our plant or warehouse. If the handover is delayed as a result of circumstances for which we are not responsible, then risk shall pass to the Customer from the date that the goods are provided ready for shipment. We will inform the Customer in good time and in writing that the goods are provided ready for shipment. The Customer shall be responsible for storage costs following the transfer of risk.

6. Force majeure

All events that are outside the sphere of influence of the Parties - even where they were foreseeable - with effects on contract fulfilment which cannot be prevented by reasonable efforts of the Parties shall release the Party affected from fulfilment of the contract for the period and to the extent that they are in effect. If the disruptions last for more than two months then either Party shall be entitled to withdraw from the contract.

7. Retention of title

- a) We retain the title in all items delivered by us until the Customer has fulfilled all claims from the business relationship with us.
- b) Our retention extends to all new products that emerge through processing the goods that are subject to the retention of title. This processing is performed for us as manufacturer. With any processing, combining or mixing with items which do not belong to us we acquire co-ownership at the ratio of the invoice value of our goods subject to the retention of title in proportion to the invoice values of the other materials.
- c) For as long as the title is retained by us and to the extent that the Customer has the goods subject to the retention of title at its disposal, the Customer must handle and store these goods carefully and must carry out any necessary and standard inspection, service and maintenance work at its own cost. The Customer may neither mortgage the goods subject to the retention of title nor pledge them as security for the period that they are subject to the retention of title. Notification must be provided to us immediately where the goods subject to the retention of title are accessed by third parties, for instance by way of attachment or seizure, or where they are damaged or destroyed. The Customer must bear all costs that are required to revoke the access and recover the goods subject to the retention of title to the extent that they are not capable of being seized by third parties.
- d) We shall be entitled to withdraw from the contract and to recover the goods subject to the retention of title in the event of any conduct of the Customer which is in breach of the contract, in particular breach of the duty to handle the goods subject to the retention of title with care along with the other duties of care and in the event of default of payment.

8. Properties of the goods

- a) Our statements on the goods delivered (e.g. weights, dimensions, usage values, capacity, tolerances, and technical data) along with our representations are descriptions and characterisations for the goods delivered. Variances that are customary in the trade as well as variances that occur on account of legal regulations or that represent technical improvements are permissible unless they impair the usability for the purpose under the contract.
- b) Properties of the goods are deemed in principle to be solely those properties described in the product description, the specifications and our characterisations. Public statements, advertisements or promotions do not represent statements on the properties of the goods purchased.
- c) Any agreement on a warranty must be made in writing and shall be effective if it describes the content of the warranty as well as the length and the geographical scope with adequate certainty.

9. Notification of defects

- a) The Customer's rights arising from product defects are conditional upon the fact that the latter has properly complied with its investigation and notification obligations under section 377 of the German Commercial Code (HGB).
- b) Notification of defects must be provided immediately in writing, no later than 14 days following receipt of the goods or following detection in the case of concealed defects.

10. Rights of the Customer in the case of defects

- a) Where the goods purchased are defective we reserve the right to select the type of supplementary performance – whether this is rectification of the defect or delivery of a new item free from any defects. Where we rectify the defect we shall bear the costs involved in this such as carriage and transportation, labour and material costs, insofar as there is no increase in these through the fact that the item purchased is subsequently taken to another location, unless taking it to the new location is in accordance with the intended usage.
- b) If the supplementary performance should fail then taking account of the statutory regulations, the Customer shall be entitled to reduce the purchase price or to withdraw from the contract. Claims for compensation under point 11 shall remain unaffected by this.

11. Liability for damage

- a) We are liable to our Customers in accordance with the applicable statutory regulations for damage caused by us, our bodies or agents either wilfully or with gross negligence; this includes for claims outside of the contract. In the event of a breach of essential contractual obligations we are also liable for damage caused through gross negligence of our employees, however, this is limited to damage which is typical for the contract and which can reasonably be foreseen upon contract conclusion.
- b) The Customer's claims for damages are excluded in the case of slight negligence on our part or that of our employees or agents, unless there is a breach of essential contractual obligations. In this event we shall be liable for damage which is typical for the contract and which can reasonably be foreseen upon contract conclusion.
- c) Statutory liability for culpable injury to life, limb or health remains unaffected by this; this applies also to any potential mandatory liability under the German Product Liability Act.
- d) Any further liability is excluded, regardless of the legal nature of the claim asserted.

12. Limitation

Claims for defects from the Customer shall expire in one year in the case of section 438 sub-section 1 no. 3 of the German Civil Code (BGB) and in two years in the case of section 438 sub-section 1 no. 2 BGB, from the start of the statutory limitation period in each case. Any mandatory statutory limitation and liability rules, such as liability through accepting a warranty, liability for actions taken with intent or gross negligence, for injury to life, limb or health and for breach of essential contractual obligations, along with liability under the German Product Liability Act and the rules on the purchase of consumer goods remain unaffected.

13. Technical consultation

Any technical user advice provided by us in writing and through trials is provided to the best of our knowledge, but is deemed to be solely non-binding advice, including in relation to any third-party property rights, and it does not release the Customer from carrying out its own review of the goods delivered or from reviewing the suitability for the intended procedures and purposes. Any application, use or processing of the products shall be made outside of our sphere of control and shall therefore be exclusively within the Customer's area of responsibility.

14. Applicable law, place of jurisdiction

- a) The applicable law is exclusively German substantive law. Any application of the UN Convention on the International Sale of Goods is excluded.
- b) Where the Client is a trader within the meaning of the German Commercial Code, the place of jurisdiction is Holzminden. We are entitled, however, to bring proceedings against the Customer before the court responsible for the Customer.

15. Effectiveness clause

In the event that an individual provision in these terms and conditions is or becomes invalid in whole or in part, this shall not impact the effectiveness of the remaining provisions or the regulatory items linked with these. The Parties undertake to replace any ineffective provision with an effective provision that comes closest to the economic aim of the ineffective provision.

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